



WRITTEN STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION  
FOR THE RECORD OF

**United States Senate Committee on the Judiciary  
Hearing on “Oversight of the Administration’s Decision to  
End Deferred Action for Childhood Arrivals”**

October 3, 2017

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On behalf of the American Civil Liberties Union (“ACLU”) and our more than two million members and supporters, we submit this statement for the record of the Senate Judiciary Committee’s October 3, 2017 hearing on “Oversight of the Administration’s Decision to End Deferred Action for Childhood Arrivals.” The ACLU condemns President Trump’s cruel decision to rescind the Deferred Action for Childhood Arrivals (“DACA”) program on September 5, 2017. This decision has thrown the lives of 800,000 Dreamers — young immigrants who came to the U.S. as children — into disarray and put them at risk of unemployment and deportation.

Due to the President’s unnecessary decision to revoke DACA, there is now an urgent need for Congress to pass legislation that will provide a path to citizenship for immigrant youth. To that end, the ACLU strongly urges all Members of Congress to support and vote for a clean version of the bipartisan Dream Act of 2017 (S. 1615 and H.R. 3440). By contrast, the ACLU cannot support the recently introduced Solution for Undocumented Children through Careers Employment Education and Defending our nation (“SUCCEED”) Act (S.1852), a bill that not only sets Dreamers up to fail through overly strict eligibility requirements and harsh penalties, but also attempts to use immigrant youth as pawns in exchange for sweeping changes to the nonimmigrant visa and immigration detention systems that have nothing to with Dreamers.

### **Congress Must Take Immediate Action to Pass the Bipartisan Dream Act of 2017**

The ACLU urges every member of Congress to support and call for an immediate vote on the Dream Act (S. 1615 and H.R. 3440). The repeal of DACA has created an unnecessary, dire emergency for Dreamers across the country, and for the millions of Americans who live, work, and study with them. If Congress does not pass the Dream Act by March 5, 2018—the date that the Trump administration will terminate DACA—1,400 DACA recipients will become undocumented and subject to deportation every day.

The consequences of ending DACA are already being felt across the country. No new DACA requests are being considered, leaving over 200,000 young Dreamers who have yet to turn 15 and become eligible for the program unsure of their futures.<sup>1</sup> Dreamers are being forced to make difficult decisions about whether to register for college classes or take new jobs while their future ability to pay tuition and work in the U.S. remains unclear. Many undocumented immigrant youth are now parents to U.S. citizen children and first-time home buyers and must now contend with the possibility that they may eventually lose status and with it their ability to work and support their family.

Under DACA, approximately 800,000 immigrant youth have registered with the government and are temporarily protected from deportation. Approximately 95 percent of DACA recipients are either working or in school, 65 percent bought their first car and 12 percent bought a home. In addition to the moral reasons for not making 800,000 Dreamers undocumented and subjecting them to deportation, driving them out of the workforce will result in more than \$460 billion in

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<sup>1</sup> Randy Capps, Michael Fix, and Jie Zong, *The Education and Work Profiles of the DACA Population*, MIGRATION POLICY INSTITUTE (Aug. 2017), <http://www.migrationpolicy.org/research/education-and-work-profiles-daca-population>.

lost GDP and will cost employers \$3.4 billion in unnecessary turnover costs<sup>2</sup>. Contributions to Medicare and Social Security will also be cut by \$24.6 billion over a decade.

There has been significant momentum for bipartisan legislation that would allow Dreamers to continue to live, work and contribute to the only country most have ever known. Members of Congress from both sides of the aisle recognize the positive contributions undocumented immigrant youth have made to the social and economic well-being of the United States. Just this week, Fox News released a poll that found that 83 percent of voters support a path to citizenship for Dreamers and that 62 percent say it is extremely or very important that Congress pass legislation (more than health care and tax reform). Additionally, [3,400](#) faith leaders, [600](#) college and university presidents and more than [750 business leaders](#) from every sector of the economy have called on Congress to pass legislation to protect Dreamers permanently.

Although there are multiple bills in Congress that seek to provide relief for this population, the ACLU believes that the Dream Act of 2017 (S. 1615 and H.R. 3440) is the best legislative vehicle to permanently protect Dreamers. We urge Congress to pass the bill immediately for the following reasons:

- **The Dream Act is a bicameral, bipartisan legislative solution.** Championed by Senators Graham (R-SC) and Durbin (D-IL) in the Senate and Representatives Ros-Lehtinen (R-FL) and Roybal-Allard (D-CA) in the House, the Dream Act is supported in both chambers by Members of Congress on both sides of the aisle with 9 additional cosponsors in the Senate and 200 cosponsors in the House. The bipartisan nature of the bill provides Congress with the best opportunity to take action and provide immediate relief for the 800,000 Dreamers whose lives remain in limbo.
- **The Dream Act provides a path to citizenship for undocumented American youth.** A Dreamer would have to be in conditional permanent resident (“CPR”) status for 8 years before they could become eligible to apply for legal permanent resident (“LPR” or “green card holder”) status, and after five years as an LPR, they could apply for U.S. citizenship. This provides a much-needed permanent fix for undocumented youth who are American in every way except on paper.
- **The Dream Act will significantly benefit the American economy.** The benefits of allowing Dreamers to continue working and contributing to their communities are enormous. Passing the Dream Act, and placing all of the potentially immediately eligible workers on a path to legal status, would add a total of \$22.7 billion annually to the U.S. gross domestic product (GDP). Because the gains from legalization grow each year, the cumulative increase in GDP over 10 years would be \$281 billion.<sup>3</sup>

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<sup>2</sup> Ike Brannon, *The Economic and Fiscal Impact of Repealing DACA*, CATO INSTITUTE (Jan. 18, 2017), <https://www.cato.org/blog/economic-fiscal-impact-repealing-daca>; Nicole Prchal Svajlenka, Tom Jawetz, and Angie Bautista-Chavez, *A New Threat to DACA Could Cost States Billions of Dollars*, CENTER FOR AMERICAN PROGRESS (July 21, 2017), <https://www.americanprogress.org/issues/immigration/news/2017/07/21/436419/new-threat-daca-cost-states-billions-dollars/>.

<sup>3</sup> Francesc Ortega, Ryan Edwards, and Phillip E. Wolgin, *The Economic Benefits of Passing the Dream Act*, CENTER FOR AMERICAN PROGRESS (Sept. 18, 2017), <https://www.americanprogress.org/issues/immigration/reports/2017/09/18/439134/economic-benefits-passing-dream-act/>

## The SUCCEED Act Fails Dreamers

While introduction of the Solution for Undocumented Children through Careers Employment Education and Defending our nation (“SUCCEED”) Act (S.1852) by Senator Tillis (R-NC) is a positive sign that both parties recognize the need to address the newfound vulnerability of Dreamers, the ACLU does not support this bill. The bill imposes penalties and eligibility requirements that would exclude thousands of Dreamers from qualifying for trivial or minor matters such as being convicted of traffic offenses or because of inflexible work and education requirements. It also uses Dreamers as hostages for sweeping changes to the nonimmigrant visa and immigration detention systems that have nothing to with Dreamers, imposes harsh penalties on immigrants, and raises serious constitutional concerns.

The SUCCEED Act fails Dreamers in the following ways:

- **The SUCCEED Act excludes many DACA recipients from legal protections.** S. 1852 is much narrower than DACA and the Dream Act. It disqualifies many Dreamers who currently have DACA from protection for minor conduct.<sup>4</sup> For example, S. 1852 would exclude any applicant who has failed to update his or her address with the Department of Homeland Security (“DHS”) within 10 days of moving.
- **The SUCCEED Act sets Dreamers up for failure by forcing them to agree to deportation if they do not meet the Act’s requirements.** In order to obtain CPR status, Dreamers will be forced to give up their right to apply for most forms of relief from deportation if they violate any requirement of CPR status; they also will be monitored for compliance with CPR status for 10 years.<sup>5</sup> This requirement means that if a Dreamer fails to meet the strict employment or schooling requirements, that individual will be unable to apply for asylum, voluntary departure, or cancellation of removal (a form of relief based on showing that deportation would cause hardship to a close family member) and could be deported. This measure is tremendously harsh and more onerous than any immigrant visa category in recent history. It sets Dreamers up to fail and punishes them for life events that are often out of their control. For example, if a Dreamer becomes sick or disabled and is no longer able to attend school or maintain employment, or if they are laid off as a result of an economic downturn, they will not only have to worry about how they will take care of themselves and their family, but they will also have to worry about falling out of status and facing immediate deportation.<sup>6</sup>
- **The SUCCEED Act subjects Dreamers to immediate deportation by an immigration officer— without any hearing in front of a judge—under an unconstitutional “one strike and you’re out” rule.** S. 1852 denies basic due process to Dreamers with minor

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<sup>4</sup> *Id.* § 3(a)(1)(H).

<sup>5</sup> Solution for Undocumented Children through Careers, Employment, Education, and Defending our Nation Act, (hereinafter “SUCCEED Act”) S. 1852, 115<sup>th</sup> Cong. § 3(a)(3)(B) (2017).

<sup>6</sup> Although the Act provides for a humanitarian waiver on a case-by-case basis, it does not explain the circumstances when the waiver would be granted and also bars Dreamers from challenging the denial of a humanitarian waiver in federal court

contact with the criminal justice system,<sup>7</sup> in violation of the Fifth Amendment to the U.S. Constitution. This cruel and unconstitutional policy would sweep in:

- Any individual with a single misdemeanor conviction leading to a sentence of at least 90 days. Such offenses could include trespassing on private property, bouncing a check, and graffiti-writing, for which deportation would be a grossly disproportionate outcome.
  - Any individual with a single first-time misdemeanor conviction for marijuana possession or prostitution – offenses that much of the public does not consider to be particularly serious – regardless of whether the person served a day in jail.
  - Any individual with a single felony conviction, or for a combination of minor misdemeanors that resulted in a sentence of at least one year, even if the conviction resulted in a suspended sentence, a probation-only sentence, or some other alternative to jail, and they had a completely clean record otherwise.
- **The SUCCEED Act denies Dreamers the ability to sponsor their spouses and children to immigrate to the U.S.** S. 1852 contains language intended to deny Dreamers the ability to sponsor their spouses or children – even after the Dreamer has attained LPR status.<sup>8</sup> Under current law, anyone with a green card can sponsor their spouse or child. Putting Dreamers in a separate category to prevent them from reuniting with family is heartless and unjust. Anti-immigrant groups claim that these measures are necessary to prevent “chain migration”; however, this claim holds little water: LPRs have to wait years, if not decades, to reunite with their families. For example, under the bipartisan Dream Act, Dreamers will have to wait eight years to become permanent residents and during that time they will not be able to sponsor any of their relatives.
  - **The SUCCEED Act kicks Dreamers off the pathway to citizenship for receiving tax credits and benefits available to all workers.** S. 1852 disqualifies anyone from renewing conditional permanent resident status if he or she has received tax credits or other earned benefits.<sup>9</sup> The tax credits include the Earned Income Tax Credit (“EITC”) and the American Opportunity Tax Credit (“AOTC”), which are available to working individuals and students, respectively. Prohibiting the AOTC will make it harder for Dreamers to fulfill requirement of attending college for staying in status. Dreamers are also prohibited from receiving Unemployment Insurance, Social Security, and Medicare – benefits which are available to working-age people only if they have earned them through work and then lose their jobs through no fault of their own or who become injured or disabled. Punishing Dreamers for obtaining these earned tax credits and benefits that all other immigrants in legal status can obtain is vindictive and unnecessary.
  - **The SUCCEED Act threatens the mass detention of asylum seekers and other immigrants by arbitrarily limiting DHS’ authority to grant parole.** S. 1852 imposes strict restrictions on DHS’ longstanding parole authority that have nothing to do with Dreamers. S. 1852 would thus limit DHS’s ability to prevent arbitrary detention of many immigrants, including asylum seekers who present themselves to a port-of-entry

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<sup>7</sup> SUCCEED Act § 4(c).

<sup>8</sup> *Id.* § 8.

<sup>9</sup> *Id.* § 4(d)5.

and are found to have a significant possibility of winning asylum in the United States.

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In the wake of President Trump's decision to rescind DACA, it is imperative that Congress take immediate action. The lives of 800,000 DACA recipients hang in the balance. The ACLU urges Congress to pass the bipartisan Dream Act of 2017 (S. 1615 and H.R. 3440)—a bill that historically garnered bipartisan support and which of the overwhelming majority of Americans believe is the right thing to do.<sup>10</sup> In contrast, the SUCCEED Act is the wrong way forward.

If you have any questions, please contact Lorella Praeli, Director of Immigration Policy and Campaigns, at 202-675-2328 or [lpraeli@aclu.org](mailto:lpraeli@aclu.org).

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<sup>10</sup> Chris Nichols, *Do three-quarters of Americans support the DREAM Act? Nancy Pelosi says so*, POLITIFACT (Sept. 19, 2017), <http://www.politifact.com/california/statements/2017/sep/19/nancy-pelosi/nancy-pelosi-claims-three-quarters-americans-suppo/>.