A DREAM Deferred:
From DACA to Citizenship

Lessons from DACA for Advocates and Policymakers

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“What happens to a dream deferred? Does it dry up like a raisin in the sun?”

– Langston Hughes, “A Dream Deferred”
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I. EXECUTIVE SUMMARY

This report analyzes an executive policy called “Deferred Action for Childhood Arrivals” (“DACA”) and uses lessons gained from DACA applicants and practitioners to discuss potential future immigration programs. With necessary Congressional action on more comprehensive immigration reform in a stalemate, the U.S. Department of Homeland Security (DHS) announced DACA in a June 2012 memorandum; it is now at its two year anniversary. The policy behind DACA recognizes that many young undocumented immigrants face a troubling reality as they come of age in the United States. Although they share the culture and dreams of U.S. citizens, their immigration status — a choice typically made for them by migrating parents — can bar them from becoming full participants in American society. In recent years, through proposed federal legislation such as the DREAM Act, national policy makers have recognized that the deportation of young undocumented immigrants should not be a high priority for DHS, and that these young arrivals might traverse a different and unique path through the immigration system.

In the first 21 months after DACA took effect, more than 642,000 applications were accepted to be processed, with nearly 96% of reviewed applications approved. The USCIS scaled up a vast program quickly, reaching about a third of the estimated population of eligible youth. Advocates, clergy, foreign consular officials and immigrants themselves helped translate new rights into reality, as did lawyers, who are the focus of this report.

To understand what the DACA experience can tell national policy makers and advocates about the drafting and implementation of future immigration programs, Appleseed surveyed practitioners and applicants in cities across the United States during the course of several months in 2013. The questions asked covered a diverse range of topics concerning DACA, including trends in the DACA caseload, strengths and challenges of the DACA application, and the fears and hopes of DACA applicants.

An analysis of the data collected in these interviews provides an informational base that can help answer some difficult questions:

- How can DACA itself be improved to reach remaining potential beneficiaries?
How can young undocumented immigrants seek meaningful assistance?

How can the lessons learned from DACA improve future programs designed to resolve or modify the status of undocumented immigrants, such as the Registered Provisional Immigrant (“RPI”) Program in the 2013 Senate Immigration Bill (“S. 744”)?

Key findings from our interviews are summarized below, as well as their implications for future programs intended to provide legal status to the millions of undocumented immigrants in the U.S.

**Key Findings**

- **DACA provides only a two-year reprieve for individuals who need a long-term immigration solution. This results in eligible individuals electing not to apply for DACA and instead choosing to wait for a more permanent program.**

- **The $465 application fee restricts access to DACA, especially for families with more than one potential applicant. Unlike fees for some other immigration benefits, DACA fees can be waived only in the most extraordinary circumstances. Additionally, DACA-eligible individuals may be awaiting a more permanent program in an attempt to save their limited means.**

- **Completing the DACA application has been relatively straightforward, but a few portions of the application are confusing for applicants. Many applicants are confused as to what constitutes a misdemeanor that is not a “significant misdemeanor,” which would disqualify a DACA applicant. Additionally, applicants expressed difficulty supplying documentation proving continuous residence in the United States.**

- **DACA-eligible individuals are often concerned that DHS may potentially use application information against them – or their families – in future deportation hearings.**

- **Undocumented immigrants in rural areas or in communities with limited internet access are less informed about DACA, so these communities have not utilized DACA to the same extent as others.**

- **One of the most effective ways to process applications is to hold group processing clinics. Effective DACA clinics require outreach prior to the clinic, as well as well-trained volunteers, an appropriate forum, and an organized flow-through system.**

**Implications and Summary of Recommendations for Future Immigration Policy and Programs**

After interviewing practitioners and applicants, we collected and analyzed the information and identified common issues across the country. These issues inform how DACA can be improved, and how future immigration programs might be structured to best benefit applicants. Based on our research, we recommend that future programs:

- **Allow Individuals To Apply For Permanent Solutions.**

  While welcome, an executive action such as DACA is inherently limited; indeed, its continued existence is at the discretion of the executive branch. An executive
policy like DACA is admittedly more palliative than curative. Legislative action is urgently needed to address immigration issues in a more holistic fashion. Although a two-year deferral of all immigration action was described as helpful by DACA applicants, they as well as those who are eligible but have not applied for DACA desire a more permanent solution. Creating a program that allows participants to apply for a green card and citizenship would ensure greater participation and more effectively integrate friends, classmates and neighbors into our communities and workforces.

- **Ensure Accessibility.**
  Inclusive programs will need to be accessible to persons of limited means. This will require creativity, generosity or careful underwriting, from government, philanthropists, attorneys, advocates and financial institutions. Future programs should consider lowering the preliminary application fee and/or allowing more applicants to qualify for fee waivers. Another option might be for DHS to spread the cost of the application over time, breaking up the fee into payments that could be paid over the two-year period, or as an extra fee for a work authorization permit. To meet the challenges of scaling a program that may be several times larger, we need to think creatively about incentives and structures to lower legal fees or provide pro bono service, and to provide small dollar loans on affordable terms to aspiring Americans. State and local bar associations should facilitate Continuing Legal Education credit for pro bono service to aspiring Americans and explore innovative ways of delivering limited scope legal representation.

- **Clearly Communicate Application Requirements, Guidelines, and Timelines to Applicants.**
  Future programs must clearly explain application requirements, such as what constitutes a misdemeanor, and should provide clear timelines and an explanation of the process to applicants.

- **Resolve Concerns About Additional Uses of Information.**
  Future programs should address applicants’ concerns over the use of information by DHS in deportation hearings.

- **Expand in Outreach to Less Accessible Communities.**
  Efforts should be focused on reaching out to rural communities that lack the same information networks as urban communities, and the USCIS should work with Consulates and non-governmental organizations (NGOs) to build trust among potential beneficiaries. Additionally, future programs must ensure that all potential applicants have internet access and the technology that facilitates on-line filing of applications and contact with advocates who can help.

- **Streamline DACA-Approved Individuals.**
  DHS has obtained information for approved DACA applicants. These individuals should be streamlined into future programs, as proposed in Senate Bill S.744, and future programs should ensure compatibility with DACA requirements.
Executive Summary

A DREAM Deferred: From DACA to Citizenship

Appleseed thanks the following from Akin Gump for their research, writing and advocacy on this project: Steven Schulman; Amjad Mahmood Khan; Erica Abshez; Iricel Payano; Porter Wiseman, Austin Lilling, Christina Padien; Christopher Petersen; Alexander Wolf; Zachary Franklin; Alon Lagstein; Samantha Booth; and Kari D’Ottavio. Special thanks to the team at AG Design, especially Glenda Adams, Harvey Duze and Joy Park.

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About Appleseed

Appleseed is a non-profit network of public interest justice centers in the U.S. and Mexico. Together with our pro bono partners, we research problems of injustice and inequality and propose workable, long-term solutions to issues affecting many vulnerable people. With our Centers, Appleseed has developed a track record of success on various issues relating to vulnerable youth, government effectiveness, immigration courts and immigrant justice. Akin Gump has partnered with Appleseed and Appleseed Centers in research and advocacy on several of these projects, including Reimagining the Immigration Court Assembly Line (2012); Assembly Line Injustice (2009); Children at the Border (2011); Justice for Immigration’s Hidden Population (2010).

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Appleseed is joined by the following Appleseed Centers in publishing this report: Alabama, Chicago, Hawai’i, Kansas, Mexico, South Carolina, Texas and Washington.
II. INTRODUCTION

On June 15, 2012, the U.S. Department of Homeland Security (“DHS”) released a memorandum, signed by President Obama, which outlined the Deferred Action for Childhood Arrivals (“DACA”) program. Under the DACA program, DHS is directed to exercise prosecutorial discretion to defer removal actions against certain undocumented immigrants who arrived in the United States as children. These undocumented young people frequently have few or no ties to the countries of their birth. Although they are first-generation immigrants, they share the culture of second-generation American society and wish to contribute more. However, their undocumented status within the immigration system prevents them from voting, driving, getting federal and, in many cases, state financial aid for universities, travelling abroad, and working legally. This lack of opportunity can stifle a child, resulting in increased high school dropout rates.

In recent years, public pressure has helped lead national policy makers to a consensus that something must be done to help young undocumented immigrants in the United States, resulting in various legislative proposals. At the same time, understaffed immigration courts and the size of the undocumented population have impelled the Administration to articulate priorities for enforcement to focus efforts on those who pose a threat to national security, those who have committed serious crimes, and recent arrivals. As an executive policy, DACA allows DHS to focus its resources on removing individuals convicted of violent crimes, for example, as opposed to immigrants who arrived in this country as children (usually through

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1 One such program is the Development, Relief, and Education for Alien Minors Act (“DREAM Act”), first introduced in the United States Senate in 2001. The DREAM Act aims to provide a pathway to legal status for undocumented students who graduate from high school, and has come up for a vote several times but has failed to become law. For more information on the history and goals of the DREAM Act, see “The DREAM Act: Creating Opportunities for Immigrant Students and Supporting the U.S. Economy,” Immigration Policy Center, available at http://www.immigrationpolicy.org/just-facts/dream-act. Additionally, in 2013 the United States Senate passed the “Border Security, Economic Opportunity, and Immigration Modernization Act,” or S. 744. This bill includes the “Registered Provisional Immigrant” (“RPI”) program, which provides a path to Legal Permanent Residence and citizenship for undocumented immigrants who have been in the United States for some time. The RPI program also incorporates portions of the DREAM Act.

Introduction

no choice of their own) and have since attended school, served in our armed forces, or have otherwise demonstrated that they are contributors to U.S. society.\(^3\)

Congress has not enacted the DACA program or any similar legislation, and future administrations may not continue it, a fact recognized by potential DACA applicants during the 2012 presidential election. Many applicants were hesitant to apply, or postponed their applications, until after President Obama was reelected because they questioned whether a new administration might cancel the program, and perhaps use the information gathered to prosecute removals.

Overview of DACA Program

To benefit from DACA, individuals must submit applications to the U.S. Citizenship and Immigration Services (“USCIS”). All participation in DACA is voluntary. A successful applicant must demonstrate that he or she arrived in the United States prior to his or her sixteenth birthday, and has continuously resided in the United States since June 15, 2007. He or she must either currently be in school, have graduated from high school or received a general education development (“GED”) certificate, or be an honorably discharged veteran. The applicant must not pose a threat to national security or public safety, and must not have a significant criminal record.\(^4\) In addition, the applicant must have been under 31 years of age and present in the United States on June 15, 2012.

Although DACA beneficiaries are considered to be “lawfully present” in the United States for the deferral period, DACA does not grant them any legal immigration status. It does not make recipients legal permanent residents, and does not provide a path to permanent residency or citizenship. Deferred action under DACA lasts for only two years, and can be revoked at any time. During the period of deferred action, though, DACA beneficiaries may be eligible to receive work authorization, pay in-state tuition at universities, travel, and obtain a driver’s license. These benefits provide some measure of security, inclusion and opportunity for persons who have been marginalized.

As of March 31, 2014, USCIS has received 673,417 DACA applications. Of the roughly 573,000 that have been processed, nearly 96% have been approved.\(^5\) DACA’s successes and shortcomings can provide valuable experience and insight into how best to help this group of young arrivals navigate the immigration system and begin to recognize their even-greater potential contributions as legal immigrants. For this reason, Appleseed undertook a study of DACA’s implementation, with a goal of understanding how the DACA experience can inform both the Registered Provisional Immigrant (RPI) program and future comprehensive immigration reform legislation. This report gathers the opinions of legal practitioners and DACA applicants and summarizes what they believe are DACA’s strengths and weaknesses or limitations. The report then uses these findings to analyze the


\(^4\) See USCIS, Consideration of Deferred Action for Childhood Arrivals Process, http://www.uscis.gov/portal/site/uscis/menuitem.eb14c2a3c5b9ac89243c6a75436d11/#pextoid=f2e2f194707310VgnVCM100000082ca60aCRD&vgnextchannel=f2e2f194707310VgnVCM100000082ca60aCRD#guidelines.

RPI program's strengths and weaknesses. Finally, the report provides recommendations for how to build the strongest and most efficient system for helping young arrivals and other undocumented immigrants legalize their immigration status.
III. METHODOLOGY

This report presents “lessons learned” from individuals who engaged with the DACA process, including lawyers from a variety of organizations and from across the country, as well as applicants themselves. These lessons provide guidance not only for improving the DACA program, but for implementing a more permanent solution, whether in the form of the DREAM Act or a comprehensive immigration reform bill, such as S.744.

Our focus is on the intersection of law, policy, outreach and advocacy in communities at a very practical level. In 2013, we connected with 26 individuals and conducted 18 interviews with practitioners who represented DACA applicants. These lawyers work in a variety of organizations, including non-profit or religious charities, private immigration practices, legal clinics at law schools and individuals providing pro bono aid at legal clinics. We spoke with attorneys from across the country, in Austin, Dallas, Chicago, Houston, Ithaca, Los Angeles, New York City, the Rio Grande Valley and Washington, D.C. Their collective experiences highlight the strengths and weaknesses of the DACA program from the perspective of those who have first-hand experience with the program. Some of these professionals have assisted with more than a thousand individual cases.

Supplementing these conversations, we researched relevant data released by USCIS and examined reports on the topic. Appleseed and several Appleseed Centers have expertise on a range of topics relating to immigration, advocacy, and the effective administration of government programs as well.

At the project’s outset, we designed an interview questionnaire covering a diverse range of topics. Interviewees were asked for their overall impressions of the program, notable trends in the DACA caseload, strengths and challenges of the DACA application process,

6 Our study included interviews with representatives from La Union (Brooklyn), Catholic Charities (multi-city), the Equal Justice Center (Houston), Neighborhood Centers (Houston), Casa Marianella (Austin), the Immigration Center for Women and Children (Los Angeles), the National Immigrant Justice Center (Chicago), and the American Immigration Council (Washington, D.C.). In addition, we interviewed Barbara Hines of the University of Texas at Austin, who has overseen 11 DACA clinics in Austin, 3 DACA clinics in the Rio Grande Valley, and serves as Co-Director of the law school’s immigration clinic. Additionally, we interviewed directors for legal clinics at Cornell University Law School, the University of Houston Law School, and St. Mary’s University Law School.
Methodology

We used this data to analyze strengths and weaknesses of the DACA program and S. 744’s proposed RPI Program. We then developed the final recommendations contained in this report, which consider how future programs or comprehensive immigration reform legislation aiding this group may be designed and improved. In signature Appleseed style, we relied on the generous pro bono contributions of 7 attorneys and 6 summer associates from Akin Gump Strauss Hauer & Feld LLP as well as our network of Centers.
IV. DACA – STRENGTHS AND LIMITATIONS

DACA has helped thousands of young undocumented immigrants feel more secure in and contribute more to the United States, the country they grew up in and in many cases, the only home they remember. As of March 31, 2014, USCIS has received 673,417 DACA applications and had accepted 642,685. Many more immigrants may benefit from the program, since by some estimates, as many as half of those eligible have yet to apply.

DACA provides immediate tangible and emotional benefits to both applicants and their families. On the most basic level, DACA has improved the lives of undocumented immigrants who entered the United States as children by simply giving them a means to remain in the nation that has become their home. By providing legitimacy and recognition to this often marginalized population, the program gives young immigrants security and access to opportunities that were previously closed to them. Acquiring DACA status presumably permits applicants facing potential workplace violations and crimes to better integrate in society and feel empowered. For example, a DACA recipient can feel more comfortable coming forward to report crimes without fear of deportation. Successful DACA applicants feel more secure in their communities and making plans for the future. DACA incentivizes, enables and inspires applicants to continue or further their education. Some applicants have been able to afford to go back to school when they were previously unable to do so, since some states, like Virginia, allow DACA recipients to pay in-state tuition.

tuition. Additionally, DACA recipients reported feeling more comfortable travelling within the U.S., which enlarged their personal experiences and growth. One DACA recipient in Texas stated that in his community, having a DACA-approved young adult in a family may aid the entire family since that beneficiary may be the only documented member of the family and can more easily travel and participate in society.

The ability to work legally is a key benefit of DACA, both to immigrants and to their employers. Several DACA applicants cited work authorization as the primary motivation for applying for DACA. Being allowed to work legally both opens up more employment opportunities and empowers young adults to leave abusive employers, knowing they may find work elsewhere. Having a work permit also makes returning to school a better investment, as it makes higher-quality job opportunities available for graduates.

Still, DACA work authorization has its limitations: both applicants and practitioners reported that in some instances, companies were not willing to hire DACA recipients due to the uncertainty as to whether DACA would be continued. Additionally, some jobs require U.S. citizenship, which DACA approval does not grant.

Successful DACA applicants can obtain a valid Social Security card, giving them access to other important documents and identification, such as driver’s licenses. A number of interviewees noted that every state except Arizona and Nebraska allows DACA recipients to obtain a driver’s license – a standard form of identification and a critical step towards employment and educational opportunity.
burdensome application requirements? This high approval rate might also indicate that the application requirements are too rigorous, and that more people could be approved for and benefit from DACA who are not applying. Because applicants have no appeal rights if their DACA application is rejected—and the fee is expensive for many—potential applicants may fear filing a marginal application and alerting the government to their presence.

Practitioners interviewed saw decreases in their DACA caseloads beginning around January 2013. No consensus about the reason for the decline emerged. Some of those interviewed think that the majority of eligible applicants had already applied, noting that the majority of recent applicants are fifteen-year-olds who have just become eligible for DACA. However, most of those interviewed did not believe the decrease was due to a lack of immigrants who could benefit from the program, and we believe the evidence supports their view. Instead, they noted other reasons why nearly 2/3 of potential beneficiaries have not yet applied:

• applicants waiting for comprehensive immigration reform;
• applicants with more complex cases being hesitant to apply;
• older applicants’ concern with aging out of the program before being approved, and losing the fee;
• applicants applying for “better” programs if they are able, such as through citizen family members or spouses;
• the cost of applying, especially if using a private attorney;
• the necessity of applying both for DACA and advance parole (official permission to leave and re-enter the United States) in order to travel abroad; and
• the difficulty of proving the DACA presence requirements.

The DACA program was launched against a backdrop in a crisis of access to civil legal services. One particularly excellent report, of many reports on this crisis, is The Task Force to Expand Access to Civil Legal Services in New York report to Chief Judge Jonathan Lippman.11 Like other attorneys helping people with benefits and civil legal issues, attorneys helping DACA immigrants are eager to assist, but strained.

Several practitioners noted that the cases that they are now seeing are more complex (or marginal) and that they are seeing more applicants with criminal records, particularly marijuana possession, and interruptions in education. Complex cases may be increasing as potential applicants see others apply successfully and decide to apply as well. One practitioner who works at a non-profit in Texas says that the current decrease in her case load (about 8 cases a month, down from 25–40 cases a month early on) is more due to the volume of time-consuming complex cases, rather than a decrease in applicants.

Uncertainty regarding the fate of the program, and uncertainty regarding comprehensive immigration reform, should not be discounted as reasons for decreasing applications.

Applications slowed during the months leading up to the 2012 election for fear that the program would disappear if President Obama were not reelected. Applicants remain keenly aware that DACA relief is only temporary, and applicants may be torn between receiving the benefits of DACA and waiting for other programs, such as the proposed Registered Provisional Immigrant (“RPI”) program that is part of Senate Bill S. 744, which would have its own application fee. Some of those interviewed suggested that the eligible immigrants who have not yet applied may be saving their resources and energy for comprehensive immigration reform, which they hope will provide the long-term solution that is not available from DACA. Some high school students who are too young to work and are presently in school may feel that they are not at risk for deportation, thereby making the program less valuable. On the other hand, many high school students did apply for DACA to stop the clock running on “unlawful presence.” Another reason why applicants might wait for a different program is that DACA does not allow beneficiaries to leave the United States; the immigrant cannot travel back and forth to his or her home country without filing for and obtaining advance parole. However, some applicants valued the fact that DACA allowed them to travel within the United States, particularly by air, for the first time with peace of mind.

Many of these limitations are discussed at more length below. DACA was never intended to be a permanent solution, but rather a bridge to a solution. Although it has been a successful program by its own limited terms, it has also highlighted how much more needs to be done. The DACA experience also highlights issues that will need to be addressed in any program to provide undocumented immigrants with a path to citizenship.

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13 “Unlawful presence” is any presence within the U.S. without being admitted. Unlawful presence for longer than a certain period of time can bar immigrants from U.S. naturalization and from re-entering the United States for lengthy periods.
V. DACA – CONCERNS AND AREAS FOR IMPROVEMENT

Notwithstanding the real benefit that has been realized by undocumented immigrants who have availed themselves of the safe harbor provided by DACA, immigration professionals have identified issues with DACA that fall into a few broad categories – access, documentation and permanence.

Access

Inability to access the protections offered by DACA is the number one deficiency identified by immigration professionals. Specifically, lawyers identified the three biggest access issues as being fees and costs; information and the education requirements.

1. Fees and Costs

The DACA filing fee is $465, composed of a $380 fee for employment authorization and a $85 fee for a biometric “services” (fingerprints, photographs and signature): a burdensome sum for some intended beneficiaries. Imagine how high this fee feels for families with more than one person eligible for DACA relief, or for potential applicants who need the help of counsel. One interviewee estimated that the total cost of applying, including legal advice and the fee, ranged between $1000 and $1,500 per person in the Rio Grande Valley. A legal aid organization in Chicago helps clients for a reduced fee of $250 per application. In a New York City immigration law firm, lawyers charged $1,500 for application assistance. A fee waiver is available in certain very limited circumstances. The DACA fee waiver is much less generous than other immigration fee waivers, such as...
those available in Violence Against Women Act (VAWA) applications, and is perceived to take too long to process.

A director of law clinics run in San Antonio reported that often parents do not want to file any DACA applications for their children until they can file applications for all of their children at the same time. As a result, families that are often already struggling financially need to raise hundreds, if not thousands, of dollars to apply for DACA relief.

A common sentiment reported by the professionals we interviewed is that potential DACA recipients are choosing to save their money to apply it to a more permanent immigration solution, such as the proposed RPI program, which, if enacted, would require applicants to pay assessed taxes and application fees not yet determined, but assumed to be far more expensive than DACA.

Ironically, by saving money in the hope of filing an application for permanent relief should immigration reform pass, potentially-eligible people may impair their own chances for staying in the U.S. That is, without the temporary relief of DACA, some people are in the U.S. without legal status, risking deportation and possibly limiting eligibility for future relief, as a result of continued illegal presence.

FEE WAIVERS

Several applicants in the Rio Grande Valley said that they were never informed of the existence of the DACA fee waiver, and information sessions and clinics may not even mention waivers because USCIS has indicated that they will rarely be granted. Legal professionals often advise against seeking a fee waiver because of the difficulties and delays attendant to doing so.

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14 Applicants are exempted from DACA fees in such limited circumstances as when an applicant under 18 lives in poverty and is homeless or is without familial support, has serious or chronic disabilities, or has medical expenses exceeding $25,000. See USCIS Frequently Asked Questions, Filing Process Question 4, available at http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions. In contrast, in completing Violence Against Women Act applications, applicants are entitled to a fee waiver based on a demonstrated inability to pay, which may be shown by proving that your household income is at or below the 150% poverty level, or by showing you receive means-tested benefits, or are experiencing a financial hardship that prevents you from paying the fee. See USCIS Fee Waiver Guidance, available at http://www.uscis.gov/feewaiver.

15 See S. 744 § 2101(c)(10) (providing that the fee “shall be set at a level that is sufficient to recover the full costs of processing the application”).
2. Information

DHS’s USCIS clearly spells out information about DACA on its website and on the instruction form for I-821D; however, trusted intermediaries play a critical role in getting information about DACA to potentially eligible people and building confidence in the process. Information regarding DACA is generally recognized as being most accessible in urban areas where there are plenty of computers and other technology – and an infrastructure of consulates, advocates, community organizations, legal services and pro bono help.

In rural communities, or communities with limited internet access or technology, information disseminated regarding DACA is quite limited and, not surprisingly, fewer DACA applications have been filed from those communities. Survey participants indicated that rural communities contain significant populations of individuals who might qualify for DACA relief, but because they do not know about the program or how to access it, they are not taking advantage of the benefits it can provide. Uptake of DACA varies by country of origin,16 which also indicates that trusted intermediaries working in some communities are critical to the program’s success, as are attorneys and advocates who can reach out to and communicate with people who may sometimes not be fully comfortable communicating about legal issues in English.

3. Education

To be eligible for DACA, an applicant must either currently be in school, have graduated from high school or received a GED certificate, or be an honorably discharged veteran. On its face, such a policy is an understandable means to reward achievement, but foreign-born youth aged 16-24 have a 16% drop out rate, four times higher than the 4% drop out rate of children born to native-born parents.17 Several practitioners voiced concern over the inflexibility of the education requirements, especially for migrant farm workers. As a law clinic director in New York explained, agricultural workers find it difficult to enroll in GED classes, and those who had started a GED class were often later told that they had to drop out because they did not have the needed English language skills. Practitioners also expressed concern about the education requirements’ exclusionary effect on night workers, potential applicants who may have been home-schooled and children who were disabled and could not attend or complete a school or vocational program.

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DACA – Concerns and Areas for Improvement

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Documentation

1. The Application.

A DACA applicant must demonstrate the following, among other things:

- proof of continuous residence since June 15, 2007 through the date of the application;
- proof of entry into the United States as of June 15, 2012; and
- proof of presence in the United States on June 15, 2012 and at the time of making the DACA request.

Each requirement makes sense taken individually, but cumulatively the demand for such proof can lead to arbitrary results and serve as a barrier to participation. For example, one practitioner in Texas spoke of a 16-year-old student who would have been an ideal DACA candidate but happened to have been out of the U.S. visiting family in Mexico on June 15, 2012. The few days surrounding June 15, 2012 were the only time that the student had left the U.S. since arriving as a baby. The practitioner also noted that she had met many potential candidates at clinics who could not apply for DACA because they arrived in July of 2007 or were out of the country on June 15, 2012. Another practitioner in Texas questioned the logic behind rejecting DACA applicants who had been deported for petty offenses a month before June 15, 2012.

Eligible individuals may face a tough situation when proof is unavailable. Leases may be informal among family and community members of people without documentation. Living in the shadows means just that: living quietly, secretly, below the radar of the law’s formalities. Even when proof of continuous residency exists, many potential DACA applicants do not want to produce evidence to the very government that could initiate deportation proceedings against parents and family members who have no DACA-type program available to them. Additionally, survey participants noted that many DACA-eligible individuals frequently move, and many came to the U.S. so young that they have no memory of or documentation relating to their entrance into or continuous residency in the United States.

Employers of potential DACA applicants are likewise unwilling or unable to produce evidence supporting continuous residency, for the obvious reason that they were not authorized to employ the individual. Directors of law clinics run in Houston reported that although the DACA website hosted by USCIS affirmatively stated that DHS would neither penalize those who had worked without authorization nor those who had employed unauthorized workers, ancillary issues still concerned applicants, such as previous use of fake Social Security numbers. They also specifically recalled a client who could not get an affidavit from a former employer who did not want to admit to hiring an unauthorized worker. Presumably, it may be hard to convince employers to admit to unauthorized hiring practices when they have little to gain by supporting DACA applicants. Off-the-books workers are just that: off the books. Future policymakers might consider encouraging employers to support applicants for DACA or similar programs by strengthening the guidance on forbearance or affirmatively giving incentives to come
forward to help document applications. DHS should provide a comprehensive, but not exclusive, list of examples with acceptable proof.

Survey participants indicated that USCIS has been flexible regarding proof of residency, allowing medical records or receipts of purchases to suffice. Still, potential applicants may not have such receipts, and when they don’t have expert advice on the DACA application process, they may not be thinking about creative, alternative ways to prove continuous residency or entry dates, such as using postings from social media showing they were at a particular place in the U.S. on a particular date.

2. Criminal Background
As a matter of policy, the Obama Administration disqualified individuals with significant criminal backgrounds from DACA eligibility, but the rules did not clearly define the scope of disqualifying conduct. The most common problems involve the questions of what constitutes a “significant misdemeanor” and whether traffic violations are misdemeanors. Potential applicants may forego filing a DACA application for fear that a ticket or some other minor reprimand may render them ineligible. According to survey participants, a lack of clarity or misperception about these limitations has had the unfortunate side effect of deterring qualified applicants from seeking DACA relief.

Occasionally, the requirement that an applicant must not “pose a threat to national security or public safety” trips up some potentially worthy applicants. For instance, this requirement, coupled with some state law enforcement practices aimed at curbing gang violence, has led some practitioners to caution applicants who might have even tenuous connections to gangs not to apply. Both a legal clinic director and a pro bono practitioner in Texas indicated that Texas maintains a gang member database that someone may be placed on without their knowledge, solely based on accusations. Another practitioner running a pro bono legal aid center in Texas advised some of her clients not to apply for DACA if there was even a possibility of gang affiliation, such as an accusation at school.

Permanence
One systemic issue repeatedly raised by survey participants is that DACA provides a very short-term (two-year) reprieve for people who need a long-term immigration solution. Moreover, many DACA-eligible individuals are concerned that the DACA program will not be extended beyond President Obama’s administration. Potential applicants may decide not to apply for DACA protection because, by the time the application is reviewed, the program may be expiring. Although the Administration has now announced DACA renewal procedures, at the time we conducted our interviews, uncertainty surrounded even the first renewal. Accordingly, some attorneys were reluctant to advise their clients that there was no risk in divulging their lack of immigration status to USCIS.

In sum, because DACA is not part of a path to permanent residency or citizenship, our survey participants found many eligible participants were deterred from participating.
VI. DACA – LESSONS ON EFFECTIVE APPLICATION & PROCESSING PROGRAMS

The announcement of DACA triggered tremendous interest, as well as significant questions among immigrants and legal advocates as to specifics of the program. The Administration did a commendable job of producing Q and A sessions, hosting conference calls with legal advocates and community activists, and establishing procedures in short order to administer a new, large-scale program. Immigration activists also tried to help immigrants learn about and apply for DACA in a variety of ways. Discussed below are methods that practitioners and applicants believed were particularly effective in helping serve DACA applicants, especially in the program’s early rush period. The result of hard-earned experience, this information can assist practitioners in responding to the needs of future applicants to even larger programs.

Step One: Inform and Engage Opinion Leaders

The Administration recognized the importance of building confidence among intermediaries who are trusted in immigrant communities. The Administration worked with and communicated with national advocacy groups, such as National Council of La Raza, American Immigration Lawyers Association, Appleseed, National Immigration Law Center, American Immigration Council, and the Center for American Progress to explain the program, answer questions, gather concerns and refine processes. The network of fifty Mexican Consulates in the U.S. was also a noteworthy partner in instilling confidence in the application process. We recommend the Administration be relentless and creative in building its network of re-broadcasters now, as they will play vital roles in explaining programs and processes to any future potential applicants.

Step Two: Build Community Awareness

In turn, the Administration asked for help from a variety of actors in the immigrant justice community to spread the word about DACA. Outreach is critical to informing
DACA-eligible populations of the opportunity to apply; to that end, future policymakers should consider grant funding to NGOs like the grants available in S. 744, discussed below. Hosting large information sessions was an efficient way to inform many people about DACA eligibility and to answer their questions. Organizers reported holding these information sessions at a local school or church – venues much more comfortable for potential applicants than a U.S. government office. Some groups reported that having a USCIS officer present at these information sessions was helpful in answering questions authoritatively. To get people to attend information sessions and forums, student activist groups were particularly effective in mobilizing a large group of volunteers. Students distributed flyers to local businesses, informed churches, promoted the sessions in local universities, and advertised on television news stations popular in the immigrant community. Additionally, some student groups teamed up with organizations like United Farm Workers and La Union Del Pueblo Entero (LUPE) to reach more eligible individuals. Other outreach suggestions included using social media, contacting the consulate of the target population, and ensuring that testimonials from successful DACA applicants reach the target population.

**Step Three: Provide Application Assistance**

Programs with ambitious aims must find efficient ways of aiding individuals in the application process. Although applicants reported finding the application form relatively straightforward, because of the importance of the application, and because DACA affords no second chances, most felt it necessary to have a lawyer review the application prior to sending it to USCIS. Because of the high demand for legal assistance, and the relative lack of resources of DACA applicants, group processing clinics appeared to be the most effective resource for helping applicants.

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18 According to the *New York Times*, certain immigrant populations have been quick to embrace DACA, while other groups have applied in much smaller numbers. Latino immigrants, particularly Mexicans, have applied in the greatest number. This finding pairs with the fact that many Latinos “were already heavily invested in the so-called Dreamer movement,” and therefore had a method of reaching out to other undocumented Latino immigrants in place. Kirk Semple, *Advocates Struggle to Reach Immigrants Eligible for Deferred Action*, N.Y. Times, Dec. 8, 2013, available at http://www.nytimes.com/2013/12/09/nyregion/advocates-struggle-to-reach-immigrants-eligible-for-deferred-action.html?pagewanted=1&_r=0.
**Running a Successful Clinic: Advice from the Experts**

**Get Organized!**

- **Train the Trainers.** Before meeting with actual clients, make sure your volunteers understand the program. Run through typical Q and A's and all program materials. Have volunteers conduct mock interviews and complete sample applications before taking on real DACA applicants.

- **Volunteers.** The clinic must have enough volunteer lawyers who have been trained on both the DACA program itself and on how to answer each question on the application form. The volunteer lawyers do not need to be immigration experts but it helps to have at least one immigration lawyer on hand to answer more complex questions.

- **Forum.** The clinic must be held in an appropriate forum, both large and accessible, near public transportation or the target population. One practitioner suggested that high school cafeterias are ideal for hosting clinics due to their size, tables, and parking availability.

**Running a Successful Clinic, Part 2:**

**Don’t Try to Explain DACA and Write Applications In One Session.**

**Information Sessions.** Before the formal DACA clinic, hold an information session so that applicants know what information to bring on the day of the clinic. Student organizers in the Rio Grande Valley said that information sessions were run and advertised at local universities, community centers, churches, and businesses. They found that advertising the information sessions on Spanish language television allowed organizers to reach the community very effectively.
Running a Successful Clinic, Part 3:

Pre-screen Your Applicants.

**Pre-screening.** DACA applicants should be pre-screened to determine eligibility, and then scheduled for a clinic and sent information in advance of the clinic. In setting up clinics in Austin and the Rio Grande Valley, one law school developed intake forms to screen applicants for eligibility and potential problems like juvenile and criminal incidents. This method was preferable to screening applicants at the same time as the clinic.

Advice from the Experts: Wraparound Services

**Other Services.** An immigration policy analyst in Washington, D.C. suggested that truly impressive clinics go above and beyond providing legal services to include services like flu shots, financial information for low-income families, and enrollment options for GED and other adult education programs. The director of law clinics run in Austin stated that one of the challenges of DACA clinics was determining what additional immigration counseling should be given. A large clinic may prevent individualized counseling on other types of immigration relief, such as T and U visas, VAWA (the Violence Against Women Act), and U.S. citizenship claims. At the Austin clinics, volunteers tried to screen for these cases and gave out information and referral sheets for these additional types of relief.
Advice from the Experts: The Clinic Itself

- **Clinic Organization.** On the day of the clinic, volunteers should help those with appointments first, and serve walk-ins when possible. One clinic director recommended having attorneys circulating to answer essential questions, coupled with review of all cases by attorneys, who relied on extensive materials and samples prepared by the law school prior to the clinic.

- **Volunteer Organization.** The clinic should have an effective flow-through system, with volunteers at check-in, and stations for consultation, attorney review, and translation. Additionally, volunteers can use checklists to stay organized and ensure they have all the necessary information from applicants. Immigration experts should “float” to assist volunteer lawyers.

- **Have a Plan for Language Access.** Language barriers must be addressed, either by assigning English-only assistants to help persons who do speak English, or by working in teams with people who are fluent in the language of the applicants.

- **Overflow.** Even if a clinic is efficient, the need for help may exceed the resources available. Several students who helped organize clinics in the Rio Grande Valley said that, especially when DACA was first announced, the response to clinics was overwhelming. The need for legal advice far exceeded the help available at the clinics. Although DACA is no longer a new program, the need for DACA clinics persists, and one student said that even in February 2013, when DACA applications had already decreased, people in the Rio Grande Valley were being turned away from clinics because not enough volunteers were available to help them. Plan the next clinic in advance to avoid disappointing those who cannot be helped at first!
VII. ANALYSIS OF THE RPI PROGRAM IN S. 744 IN LIGHT OF DACA FINDINGS

As the country strives to include our neighbors and colleagues from other countries who aspire to become Americans, we can learn from the experience of rolling out the DACA program.

On June 27, 2013, the United States Senate passed the “Border Security, Economic Opportunity, and Immigration Modernization Act,” or S. 744. This analysis focuses on the Registered Provisional Immigrant (“RPI”) program described in S. 744 Section 2101 et seq. The RPI program is designed to offer legal status and a pathway to Legal Permanent Residence (“LPR”) status and citizenship for an estimated eleven million persons in the U.S. The bill would allow undocumented immigrants to apply for RPI status if they have been in the U.S. since December 31, 2011, and meet other eligibility requirements, discussed below. While S. 744 still awaits consideration by the U.S. House of Representatives, its provisions concern some of the same issues and challenges pervading the DACA process. Thus, a comparison of the RPI program’s provisions against DACA would help underline ways in which S. 744 may already have incorporated lessons learned from DACA by policy makers, attorneys, organizers and applicants, and ways in which the process for regularizing the status of aspiring Americans could be further improved.

The RPI program also incorporates a version of the Development, Relief, and Education for Alien Minors Act (“DREAM Act”), a bill that was first introduced in the U.S. Senate in 2001. The DREAM Act originally aimed to provide a pathway to legal status for undocumented students who graduate from high school. Although the DREAM Act has come up for a vote several times and has generally garnered broad bipartisan support,

Congress has not yet enacted it.\textsuperscript{20} The RPI program has incorporated a version of the DREAM Act which provides an expedited program for eligible individuals. References in this analysis to the DREAM Act provision are to that provision in the RPI program, not to an earlier, stand-alone bill.

The RPI program also streamlines applications for those individuals who have applied for and been granted DACA relief. This comparison highlights the provisions of the RPI program that would apply to the same group of young immigrants that DACA was designed to aid. It also discusses the differences between individuals who would be eligible for the DREAM Act provision in RPI (“DREAMers”) and those eligible for DACA. These differences are discussed below, but it is important to clarify that the DREAM Act provision in RPI is not a stand-alone bill, and that its eligibility requirements differ from those of DACA.

**Overview of the RPI Program**

The RPI program in the Senate bill sets forth a long-awaited roadmap to citizenship for millions of classmates and neighbors. The road is long and complicated, but its maze at least has a door that leads to citizenship and full inclusion in the promise of America.

1. **Benefits of RPI Status**

RPI status would allow a previously undocumented immigrant to legalize his or her immigration status, so that he or she is considered to have been lawfully present in the United States as an RPI as of the date on which the application was filed.\textsuperscript{21} An RPI would be authorized to work in the U.S., and his or her spouse and/or children would also be classified as RPIs if they meet certain requirements.\textsuperscript{22} RPI status would be valid for six years, and could be extended for an additional six years so long as the RPI remained eligible, met employment requirements, and successfully cleared background checks similar to those in the original RPI application.\textsuperscript{23}

Most significantly, the RPI program would provide undocumented immigrants with a path to permanent residency and naturalization, allowing RPIs to apply for Lawful Permanent Residence (a “green card”) and eventually citizenship. Here, the Senate bill distinguishes between DREAMers and other RPI individuals in the timeline for applying for a green card and naturalization. While an ordinary applicant must have worked and maintained RPI status for 10 years prior to applying for a green card, DREAMers may...

\textsuperscript{20} Most recently, the DREAM Act was introduced in May 2011 as S. 952 and H.R. 1842. For more information on the history and goals of the DREAM Act, see “The DREAM Act: Creating Opportunities for Immigrant Students and Supporting the U.S. Economy,” Immigration Policy Center, available at http://www.immigrationpolicy.org/just-facts/dream-act.

\textsuperscript{21} Id. § 2101(d)(1)(C).

\textsuperscript{22} Id. §§ 2101(d)(1)(A), 2101(b)(5). To be granted RPI status as a child or spouse of an RPI, the child or spouse must be continuously physically present in the U.S. since at least December 31, 2012, and meet all other eligibility requirements to qualify as an RPI.

\textsuperscript{23} Id. § 2101(c)(9)(A). To meet employment requirements, an RPI must be regularly employed throughout RPI status (with breaks in employment lasting no more than 60 days). Alternately, if an immigrant with RPI status cannot show continuous employment, he or she must show income or resources not less than 100 percent of the poverty level.
apply for a green card after five years of RPI status. The bill would also allow the Secretary of DHS to “adopt streamlined procedures for [DREAMer applicants] for adjustment to lawful permanent resident status under this section who were granted Deferred Action for Childhood Arrivals . . . .” This streamlining acknowledges the overlap between DACA and DREAMers, and the fact that many DREAMers may have applied for and been granted DACA. Finally, DREAMers would be able to apply for citizenship upon receipt of their green card, while non-DREAMers would have to maintain Permanent Resident status for three years before applying for citizenship.

2. Eligibility Criteria for DREAMer Status
To qualify as a DREAMer under S. 744, an applicant must have entered the U.S. before he or she turned 16. The applicant must have earned either a high school diploma or a G.E.D., and must have completed two years at an institution of higher education. Alternately, applicants who have not pursued a higher degree are eligible if they have served in the military for at least 4 years. The bill provides a “hardship exception” if an applicant has not served in the military or pursued a higher degree for “compelling circumstances.” As discussed below, this is a heightened standard over DACA eligibility (which itself is a heightened standard over RPI eligibility). Thus, it is important to note that qualification for DACA does not necessarily mean qualification for the DREAM Act provision in the RPI program, as detailed later in this report.

3. Eligibility Criteria for RPI Status
The RPI program would be open to undocumented immigrants who entered the country at any age, not just those who entered as youths. Applicants of all ages – including DREAMers – would have to meet the same eligibility criteria to gain RPI status. Eligibility requires that an applicant is physically present in the U.S. on the date of submitting his or her application, and has maintained continuous physical presence in the U.S. from at least December 31, 2011, until the applicant is granted status as an RPI. The applicant cannot have been convicted of a felony, or three or more misdemeanors, and must be admissible under 8 U.S.C. § 1182, which lays out grounds of inadmissibility. Certain persons otherwise inadmissible are, however, eligible to participate. Additional waivers for other grounds of inadmissibility, or the three or more misdemeanor bar, could be available “on behalf of an [applicant] for humanitarian purposes, to ensure family unity, or if such a waiver is otherwise in the public interest.” Additionally, the bill provides that an applicant may not apply for RPI status unless the applicant has “satisfied any

24 Id. §§ 2102(c), 2103(b). Additionally, RPIs must go to the “back of the line” when applying for green cards, such that their status may not be adjusted until immigrant visas are available to all approved applications that were filed prior to enactment of S. 744.
25 Id. § 2103(b)(2)(c).
26 Id. §§ 2102(c), 2103(b)(3).
27 Id. § 2103(b)(1)(A)(ii).
28 Id. § 2103(b)(1)(A).
29 Id.
30 Id. § 2103(b)(1)(B).
31 Id. § 2101(b)(2).
32 Id. § 2101(b)(3); 8 U.S.C. § 1182 (2005).
33 Id. § 2101(b)(3)(A)(ii).
34 Id. § 2101(b)(3)(B)(i).
applicable Federal tax liability.” 35 Finally, the applicant must meet national security and law enforcement clearances, submitting biometric and biographic data. 36

The RPI program acknowledges that many young applicants may have been granted DACA relief, and therefore streamlines DACA recipients in the RPI application process. The bill states that “[u]nless the Secretary determines that an [applicant] who was granted Deferred Action for Childhood Arrivals . . . has engaged in conduct since the [applicant] was granted DACA that would make the [applicant] ineligible for registered provisional immigrant status, the Secretary may grant such status to the [applicant] if renewed national security and law enforcement clearances have been completed on behalf of the [applicant].” 37 While this benefits individuals with DACA status, the bill does not streamline the RPI application process for those eligible under the DREAM Act who have not been DACA-approved, or individuals who are DACA-eligible but have not applied. Thus, DREAMers and these youths must apply through the same process as all other RPI applicants.

4. RPI Application Process

The administration will flesh out most of the details of the program’s application procedure if Congress finally adopts comprehensive immigration reform; this discussion is based only on S. 744, which describes the envisioned requirements in more general terms.

The RPI program provides for a one-year application period beginning from the date on which the final rule is published in the Federal Register within one year after enactment. 38 The one-year application period may be extended for an additional 18 months in the Secretary’s discretion. 39 Thus, there would be a one year delay between the bill’s enactment and publication of the regulations governing the RPI program, during which no RPI applications would be filed.

Under RPI, applicants will need to pass a background check by submitting biometric and biographic data, as discussed above. Additionally, applicants will be required to pay their assessed taxes, and pay an application fee, the amount of which is not yet determined. 40 The program provides that the Secretary may exempt DACA recipients from being required to pay an application fee, and may limit the maximum fee payable by a family. 41 The bill also attempts to “establish a process through which an [applicant] may submit a single application under this section on behalf of the [applicant], his or her spouse, and his or her children who are residing in the United States.” 42 In addition to the application fee, individuals who entered the United States after turning 16 years old must pay a $1,000 penalty to DHS, payable in installments. 43 The application form itself is not yet in existence, but pursuant to the bill, it will collect information that the Secretary

35 Id. § 2101(c)(2).
36 S. 744 §§ 2101(a), 2101(c)(8).
37 S. 744 § 2101(c)(13).
38 Id. §§ 2101(c)(1), 2101(c)(3)(A)-(B)
39 Id. § 2101(c)(3)(A)-(B)
40 Id. § 2101(c)(10) (providing that the fee “shall be set at a level that is sufficient to recover the full costs of processing the application).
41 Id. § 2101(c)(10).
42 Id. § 2101(c)(5)(b).
43 Id. § 2101(c)(10)(C).
“determines to be necessary and appropriate,” including “an explanation of how, when and where” the applicant entered the U.S., the applicant’s country of residence prior to entering the U.S., and “other demographic information specified by the Secretary.”

Comparison of the Application and Reach of the RPI Program and DACA

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<th>Chart Comparing DACA, RPI, and DREAMer Provision in RPI</th>
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<td>Age Limit for Applicants</td>
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<td>Age Requirement When Applicant Entered the U.S.</td>
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<td>Eligibility With A Criminal Record</td>
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44 Id. § 2101(c)(4).
1. Permanence

First, and most importantly, the RPI program would provide the permanence that DACA lacks by allowing immigrants who maintain RPI status to apply for a green card and eventually to naturalize. Practitioners suggested that DACA-eligible individuals would be more likely to apply for the program if there were a path to green card eligibility and citizenship. It is clear that many more individuals would apply for RPI status than for DACA.

The RPI program would also address a source of concern with DACA applicants and practitioners, namely the ability to travel internationally. Whereas DACA does not allow beneficiaries to leave the U.S. and travel back and forth to their home countries absent a separate advance parole approval, the RPI program explicitly provides for international travel. Under this provision, individuals with RPI status may travel out of the country and be readmitted to the U.S. as long as the trip did not exceed 180 days and the individual has proof of his or her RPI status.  

2. Eligibility Criteria

The RPI program could benefit millions more people directly and provide a more significant benefit to the country than DACA, mainly because its relief is not limited...
to younger persons. RPI eligibility requires: (i) continuous physical presence in the U.S. since at least December 31, 2011, and at the time of the application, (ii) not having been convicted of a felony, or three or more misdemeanors, (iii) not meeting other grounds of inadmissibility, and (iv) clearing security screenings.

While the DACA guidelines afford certain young arrivals relief, the guidelines exclude other law-abiding young arrivals who do not fully qualify, for reasons outside of their control. Thus, some practitioners and DACA applicants feel that these guidelines are arbitrary. For example, some DACA applicants felt that the cut-off at 31 years of age was unfair to those who had spent many years fighting for immigration rights for DREAMers, but were now aged-out of the DACA program. The RPI program eliminates age limits and education requirements, which would benefit more applicants, and places the program’s focus more squarely on all immigrants present in the U.S. rather than younger childhood arrivals.

a) Eligibility Under the DREAM Act Provision

The policy behind DACA and the DREAM Act provisions of S. 744 are to provide security and inclusion for those young immigrants who came here as children, which of course benefits the whole society as we all benefit when neighbors live without fear, work at good jobs without exploitation, open bank accounts and become more integrated civically, socially and economically. One barrier to the use of DACA has been its education requirements, a barrier that is only raised higher in the Senate bill. DACA caps eligibility at 30 years of age, and only requires applicants to be enrolled in high school or hold a high school degree or G.E.D. (This follows 2012 guidance allowing those who did not graduate from high school or a G.E.D. program to enroll, which MPI estimated made 370,000 more young adults potentially eligible for DACA.) In contrast, while DREAMers can be any age, they must have entered the U.S. prior to their 16th birthdays, have earned a high-school diploma or G.E.D., and have completed at least two years of college or four years of military service. Other than just political compromise, it is not clear why the Senate bill requires a higher level of education when the policies behind DACA and the DREAM Act should be similar. Additionally, the DREAM Act provision grants DREAMers a very substantial benefit by allowing them to apply for their green card after five years of RPI status, and to apply for citizenship upon receipt of their green card. DACA-approved individuals who also qualify as DREAMers are streamlined in their green card application process; it is unclear why all DACA-approved individuals are not included in this streamlined program. If enacted, this inconsistency in S. 744 is likely a source of consternation to applicants and practitioners since the policy behind the DREAM Act also underlies DACA. DACA applicants and the lawyers who serve them are already concerned with the narrow application of DACA to those under 31, and the effects of age or disability on the ability of an applicant to enroll in school. Therefore, limiting the streamlined green card program to DREAMers and not all DACA-eligible individuals will likely meet with some resistance and confusion.

b) Crimes Affecting Eligibility

The RPI program differs from DACA in which crimes will affect an applicant’s eligibility. DACA provides that individuals are eligible if they have not been convicted of “a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or do not
otherwise pose a threat to national security or public safety.”\(^{47}\) In contrast, the RPI program bars individuals convicted of a felony (excluding one based on the applicant's immigration status), an aggravated felony, or three or more misdemeanors “other than minor traffic offenses or State or local offenses for which an essential element was the [applicant's] immigration status.”\(^{48}\) The RPI program does not include a reference to “significant misdemeanors,” which eliminates one area of confusion for DACA applicants and practitioners. Additionally, the statute explicitly states that RPI eligibility is not affected by minor traffic offenses, which was another source of confusion to DACA applicants. Another difference between the two programs is that the RPI program allows for waivers “for humanitarian purposes, to ensure family unity, or if such a waiver is otherwise in the public interest.”\(^{49}\) This provision is important because it allows for flexibility in the RPI eligibility determination.

In future programs, legislators should clarify which crimes will affect eligibility for applicants. While the RPI program’s description of disqualifying crimes clarifies some of the concerns raised by DACA applicants, other sources of confusion present in the DACA application may also be confusing or pose obstacles to RPI applicants. For example, DACA applicants and practitioners desired guidance as to whether relief can be afforded for those convicted of a felony but have been rehabilitated through the correctional system and also needed guidance about the differences among states in enforcing and defining offenses under criminal laws, including state practices related to gang affiliation.

In recognition of our country’s commitment to due process and fair treatment, the RPI program benefits from not including the vague “public safety” language used in DACA. It permits due process challenges if an applicant is barred from the program based on the contents of a gang-affiliation database, of which an applicant may not even be aware. In contrast to the vague “public safety” language, S. 744 would amend the current grounds of inadmissibility to include convictions for “an offense for which an element was active participation in a criminal street gang,” where the individual had knowledge of the gang’s illegal activities.\(^{50}\) Gang-related convictions would thus be a ground of inadmissibility barring eligibility.

c) Continuous Residency Requirements

Practitioners were concerned about the five-year continuous residency required prior to applying for DACA, and the requirement of physical presence in the U.S. on June 15, 2012. RPI will require continuous physical presence since December 31, 2011.\(^{51}\) However, as with DACA applicants, RPI eligibility will not be affected by an applicant’s absences that are “brief, casual, and innocent.”\(^{52}\) This is an improvement over DACA’s continuous residency requirement because it only requires continuous residency since 2011, rather than since 2007, and because it clearly provides a safe harbor for applicants who have left the U.S. for “brief, casual, and innocent” absences, such as to attend family


\(^{48}\) S. 744 § 2101(b)(3).

\(^{49}\) Id. § 2101(b)(3)(B).

\(^{50}\) Id. § 3701(a)

\(^{51}\) Id. § 2101(b)(2).

\(^{52}\) Id.
funerals. Nonetheless, additional guidance on what constitutes a “brief, casual, and innocent” absence would likely be helpful to clarify the application process. Additionally, RPI eligibility is not contingent on being physically present on any one day, as is required for DACA. Again, this is an improvement over DACA, where the requirement of being present on June 15, 2012, coupled with the continuous residency requirement, arbitrarily excludes some applicants who may be continuous residents.

3. Application Process

A study of the DACA application process’s strengths and weaknesses is particularly helpful in informing RPI rulemaking and House consideration of comprehensive immigration reform. The Senate version provides some needed clarifications, but certain concerns raised by DACA applicants are important to further clarify and address to ensure that the RPI application process may run as smoothly as possible. Key categories are: the time period for applying, fees, fee waivers, other costs and loans; the cost of legal assistance and access to counsel; dissemination of information by USCIS and private parties, and the use of applicant information by USCIS or other government agencies.

a) Application Time Period

DACA showed that the government is nimble enough to launch a large program quickly, and it was in some sense an excellent bureaucratic training run for any larger program. Still, even without a hard deadline for applications, practitioners believed that DACA applications were frontloaded, which caused a delay in processing. The RPI program is clearly welcome, but we urge that its short time limits for applying as set forth in S. 744 – a one-year application period, with the possibility of an 18-month extension – be extended. If the House chooses not to accept the Senate bill, we recommend it extend the deadline for application to two and a half years, without waiting for a determination by the Secretary. We further recommend that USCIS develop plans and budgets now for efficiently processing the influx of RPI applications, as eventually, the country must and will move to regularize the legal status of many persons who lack documentation.

b) Application Fees and Fee Waivers

Clearly, the higher the fees, the more access to programmatic benefits will be limited, especially among low-income families with more than one potentially-eligible applicant. The RPI program specifically includes the potential for a joint family application, or a limit on fees where multiple family members apply, which we applaud.53 Since the RPI program may open eligibility to parents as well, it is more important than ever that these discretionary measures for family fees be enacted. Joint family applications and fee limits will promote important policy goals, such as uniting the many mixed-status families in this country in citizenship and security.

Expanding fee waivers may also be important, as the experience with DACA’s limited fee waivers demonstrates. More available fee waivers are highly desired by practitioners and applicants. The RPI program does not specify how fee waivers will operate, leaving “which individuals will be exempt from such fees” to the discretion of those drafting the

53 Id. § 2101(c)(4).
regulations. The RPI regulations should perhaps index the fee based on an applicant’s ability to pay, and provide a fee waiver that is, at the very least, less limited than the DACA waiver.

Given the difficulty that the application fee posed for many DACA applicants, Congress or the drafters of regulations for the RPI program should consider whether to reduce the application fee. Programs like RPI and DACA will further increase U.S. tax receipts above the significant level already paid by undocumented residents, as beneficiaries feel more comfortable switching to better and more regular jobs, and the additional income taxes could more than offset initial costs for these programs. Congress may wish to consider (i) grants for certain applicants, (ii) an offset to the government’s receipt of tax benefits to be realized by approved applicants as a means to recover costs related to such programs, and/or (iii) provide or promote additional funding alternatives, such as guaranteed loan programs, for applicants that encourage participation in the DREAM Act program and that eliminate any financial deterrent to the program. Possibly, applicants will be more willing to pay an application fee for the RPI program than DACA, since it does provide a permanent path to citizenship. Others, lacking resources, may still be excluded by fees and penalties, absent creative solutions like abandoning fees altogether, using sliding scales or dedicating back taxes to a “fee fund.”

Other creative ways to consider reforming application fees for programs like RPI and DACA include treating the fee as a later tax, or back-ending the fee and tying it to a benefit like work authorization. These ideas are dependent on any applicable rules for a program’s application fee, and the rules governing USCIS fees over all. S. 744 provides that the application fee for RPI “shall be set at a level that is sufficient to recover the full costs of processing the application.” Additionally, under existing rulemaking, USCIS must recover the full costs of USCIS operations through fees. Thus, any fee that is set in RPI must be “sufficient to recover the full costs of processing the application,” but the program does not specify when these fees must be recovered. Additionally, RPI or other programs must consider the cost to USCIS to operate the program, and must ensure that USCIS will recover the full costs of their entire operation. A large number of fee waivers could lead to heightened fees for others applicants, including those in other immigration programs. Given the savings to other sections of DHS that can accrue from providing legal status and a path to citizenship for some current targets of enforcement actions, we believe that thoughtful policy makers can arrive at workable solutions to the barriers fees pose for some potential applicants.

c) Access to Legal Services for Applicants

Expanding access to legal status and ultimately citizenship will call upon the government and the bar to close a critical gap in access to justice. Practitioners stressed that DACA applicants often needed legal advice during the application process, and that such advice could be costly. On the other hand, some practitioners, predominantly in the law firm pro bono community, were hesitant to help applicants complete forms without agreeing to full representation for the entire process, which would require the lawyer to submit

54 Id. § 2110(b)(2)(B).
55 Id. § 2101(c)(10).
a notice of entry of appearance form (“G-28”) to USCIS. Volunteer lawyers who assist at application clinics do not want to be obligated to receive notices from USCIS on the application status and thus be liable for notifying the client of subsequent developments.

S. 744 attempts to address, at least in part, the issue of cost by creating a grant program designed to assist eligible RPI applicants. Under this program, USCIS would “award grants, on a competitive basis,” in an amount not exceeding $50 million.57 These grants are to be awarded “to eligible nonprofit organizations that will use the funding to assist eligible applicants” by providing them with certain services.58 These services include disseminating “information to the public regarding the eligibility and benefits” of the RPI program, and assistance with submitting applications for RPI status, green cards, and citizenship.59 While this would be a welcome program based on practitioners’ experience with DACA, lawmakers should consider what $50 million might actually help achieve. If nine million people applied for RPI, this aid would amount to a meager $5.50 for services per applicant. Another suggestion that USCIS might consider to encourage attorneys to reduce fees would be to ensure that local bar associations allow attorneys to earn continuing education credits for completing applications and advising potential applicants, on a pro bono basis.

In order to encourage pro bono lawyers to help individuals with applications, particularly in clinic settings, USCIS should issue guidance to clarify that a volunteer lawyer can provide assistance in completing the application without filing the G-28 Notice of Entry of Appearance form. In such cases, USCIS could require the attorney to complete the section found on most USCIS forms that identifies a preparer other than an applicant, but make clear that this does not constitute a notice of appearance or otherwise create an attorney-client relationship beyond the completion of the application. USCIS could also allow volunteer attorneys to complete this “preparer” section with only the name of the legal services or community organization sponsoring the clinic. We understand that this was done in some DACA clinics. On the other hand, a private lawyer accepting a fee for completing an application should be required to complete the G-28, so that the lawyer is responsible for advising the client on case developments.

d) Outreach and Communication from USCIS

The RPI program should absorb the lessons learned from DACA regarding communication and outreach. USCIS should focus on how to reach all eligible individuals in culturally appropriate settings, especially in rural communities where people may be less likely to hear about such programs. Strong working relationships across the range of immigrant communities and nationalities are important for USCIS to build now. As described above, the RPI program would provide grants to nonprofits to inform the public of

57 S. 744 § 2106(a)-(d).
58 Id § 2106(a)-(c). The bill proposes that an “eligible nonprofit organization” means “a nonprofit tax-exempt organization, including a community, faith-based or other immigrant serving organization, whose staff has demonstrated qualifications, experience, and expertise in providing quality services to immigrants, refugees, persons granted asylum, or persons applying for such statuses.” Id. Based on this description, Legal Services Corporation may be eligible to receive grant funding – a significant proposal since Legal Services Corporation is often the only legal services provider in rural areas of the U.S. However, federal rulemaking specifies that LSC and LSC-funded individuals may not provide legal assistance to aliens who are present in the U.S. illegally. See 45 C.F.R. § 1626.5. Statutes and rules governing LSC’s ability to aid undocumented aliens would need to be clarified and amended in order to gain the benefit of LSC’s assistance.
59 S. 744 § 2106(a)-(c).
the program, but it is also important for USCIS to reach out to rural areas and afford resources, including transportation and economic resources, to individuals in such settings. USCIS could, for instance, establish rideshare programs to clinics or encourage partner NGOs and consulates to help in this regard.

Getting a third of potential applicants to apply to DACA involved thoughtful, coordination action; reaching millions will entail more efforts in two critical areas of communications: (i) providing clear guidelines and information on timing, acceptance and approval processes, and (ii) providing forums where potential applicants might ask questions without fear of reprisal. As of now, it is unclear whether the RPI program would be administered via the internet, like DACA. If so, then USCIS must do a better job of providing free access to computer terminals and training. In today’s mobile era, USCIS should consider creating a free, downloadable mobile app to allow for access to RPI information, including information specific to a particular application.

e) Use of Application Information by USCIS

Finally, a major concern for DACA applicants has been the potential use of their information by DHS against them, their families, or their employers. Although USCIS noted that the DACA application would not increase the risk of deportation for an applicant or the applicant’s family, would-be applicants are naturally skeptical of governmental assurances. RPI applicants may have the same fears because though the bill specifies that applicants may not be detained or removed during the application period, the government may do so when “the Secretary makes a prima facie determination that such [applicant] is, or has become, ineligible for registered provisional immigrant status” based on the grounds of inadmissibility.60 This could discourage applicants with criminal records or who are otherwise inadmissible from applying, since it might open the doors to removal. To address this fear, regulations for the RPI program should provide a prohibition against deportation based on an RPI application, and protection for the applicant and the applicant’s immediate family in this regard.

Comparison of DACA Clinics and Clinics for Future Immigration Programs

To prepare for future comprehensive immigration reform programs such as RPI, practitioners can benefit from studying the experiences of those who administered DACA to large groups of people. Because many more people may be eligible for comprehensive immigration reform than DACA, resources may be stretched thin, and others who are committed to building a more inclusive society will need to be mobilized to help aspiring Americans get their paperwork and applications in order. Group processing clinics, as described in Section VI, can help more people apply for immigration programs using fewer resources than individual counseling. As with DACA, certain elements will be critical for any future immigration program clinics:

• Outreach: When DACA was announced, confusion surrounded the program, and potential applicants and their families needed more information. Immigration organizations, student groups, and others took a multi-faceted approach to outreach, using tools like television, print, and social media to inform potential applicants

60 Id. § 2101(c)(7)(D).
about DACA. This effort will need to be replicated on a larger scale with any future immigration programs that intend to legalize millions of undocumented immigrants in the U.S.

- **Volunteers:** Even more volunteers – both lawyers and other volunteers – will be needed if a program like RPI is enacted because more applicants will be attending more events.

- **Organization:** A larger number of applicants and the need for more clinics will mean that organizers will need to devote much attention to how clinics are run. The clinics must be efficient, as described in Section VI, and will need well-trained volunteers.

- **Overflow:** Organizers of DACA clinics found that even well-organized clinics did not always have the resources to help the large number of applicants that attended. For clinics intended to administer applications to a program like RPI, it will be important that organizers have the next clinic planned so that when people are not helped, they know of the next clinic that they can attend.
VIII. RECOMMENDATIONS

The RPI program in the Senate bill is a vast improvement over the stopgap program of DACA. Based on our findings, we urge the following to provide a simple, streamlined and effective option to help undocumented youths on a path towards United States citizenship.

- **Create a Program That Allows Individuals to Apply for Permanent Solutions like Green Cards and Citizenship.**
  RPI addresses the most pressing problem: lack of permanent security. Undocumented immigrants are wary of spending time and money applying for temporary measures that might leave them vulnerable to shifting political winds and potential removal when their deferred action period is over. Not providing a permanent solution leaves youths waiting to apply to future programs, remaining here illegally and subject to deportation, with limitations on their ability to contribute to society. Although providing a path to citizenship as the RPI program does requires legislation, programs offering lasting security and the potential to truly integrate as citizens are clearly preferential to stopgap measures like DACA.

- **Ensure That Applying to Such Programs is Affordable.**
  DACA applicants and practitioners generally felt that undocumented youths and their families had trouble raising the $465 fee that accompanied a DACA application. Programs should reach their targeted beneficiaries. In setting application fees, future programs should allow for family fees and applications. Additionally, fee waivers should be easier to obtain. Providing legal security to a large group of people will provide more taxes to the government, potentially offsetting application processing costs. In addition, Appleseed supports private sector and philanthropic efforts to provide low-cost loans to persons applying to work legally and secure legal protections.
• **Clarify the Treatment of DACA Recipients and Other Young Arrivals Moving Forward.**

Over half a million people now have status under DACA. These young people nearly, but not exactly, match the description of DREAMers in the DREAM Act provision of the RPI program, although the current DREAM Act provision requires two more years of higher education than DACA. Appleseed supports expediting provision of green cards, with or without two years of college education. All DACA-eligible youths should be able to qualify for the faster-track DREAM Act provision once they gain RPI status.

• **Expand Flexibility in Documentation Requirements During Application Processes.**

Because undocumented immigrants frequently move or do not execute formal documents like leases and work contracts, proving continuous residency or presence in the United States is sometimes difficult. DACA applicants and practitioners found that USCIS was often flexible in the face of a lack of formal proof of residency. This flexibility must be maintained and should be built into any future programs. Such programs might explicitly allow undocumented immigrants to use less formal evidence such as receipts and social media updates to show residency.

• **Provide Guidance on Certain Eligibility Requirements, and How Waivers May Be Applied.**

The USCIS did an admirable job of posting Frequently Asked Questions and engaging in continuous dialogue with advocates to clarify questions relating to this quickly-developed program. Still, one major concern of DACA applicants was how to interpret various terms in eligibility requirements. DACA may be considered a dry run for a larger program, and it would behoove USCIS to draft responses to Frequently Asked Questions and strike an appropriate balance between clarity and retaining discretion.

• **Clarify How and When Applicant Information May Be Used By USCIS.**

Future programs should clearly limit the use of applicants’ information against them in later deportation hearings. Processes aimed at legalizing a large group of people should not penalize them or their families, or place them in a worse position than they were prior to applying. Many DACA applicants were concerned that the information that they provided in their applications might be used against their (still) undocumented families or past employers. DACA applicants also worried that if turned down for the program, they would be immediately deported. Thus, at the outset of this stressful process, applicants should have a clear understanding of whether or not they are placing themselves and their families at risk when they apply to programs like RPI and DACA. The Center for American Progress, in its informative report on the first year of DACA, noted that DHS failed to provide information in response to a Freedom of Information Act (FOIA) request on deportations following DACA applications.61 If indeed no one had been deported as a result of information on a DACA application, DHS should say so, as the DACA policy limiting use of applications in deportation proceedings contains

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several caveats, including exceptions for public safety, national security, fraud and criminal prosecutions, and its assurances can be modified or suspended at any time.\textsuperscript{62} Not only should the assurances regarding collateral use of applications be strengthened, but the history from DACA – if information was not used against applicants or their families in deportation proceedings – would help to establish trust in the confidentiality of any future application process.

- **Communicate Clear Guidelines and Timing On Approval Processes.**
  For undocumented immigrants, an application to legalize immigration status will be very important and stressful. Thus, USCIS should help applicants navigate this period by providing clear guidance on various guidelines, training programs, acceptance and approval processes, focusing these resources on applicants with limited means. Specifically, USCIS should (i) provide an expected decision date on each application, (ii) offer clear communications as to why applications are transferred among offices (and clearly state that transfer to an office should not be a signal that an application is or will be denied or is otherwise deficient), and (iii) provide an expected “timeline” of dates of USCIS correspondence and intervention so as to mitigate any negative reaction to unexpected correspondence.\textsuperscript{63}

- **Remove Restrictive Limitations on Application Periods.**
  The proposed limited application period of one year for the RPI program may frontload applications, causing delays in decision time and placing an undue administrative burden on USCIS. Moreover, the lack of clarity on whether the application period will be extended may create a further push of early applications, especially in the face of fears of policy shifts. Processing over 600,000 applications in two years has been a stretch for the government; imposing such a short application period for a larger program will entail a sizable investment in infrastructure to process applications. The application period should be extended to allow applicants time to gather the correct documentation and save up to apply, and to ensure that the government is able to give applications timely and thoughtful consideration.

- **Ensure That Communities Are Informed of Available Immigration Programs.**
  Based on our DACA analysis, populations of undocumented immigrants in urban settings have greater access to information about immigration programs which might benefit them. Other organizations, such as the Center for American Progress, have found that people from some countries of origin received much more extensive communication about DACA from their consulates and in media in their native languages. Future programs should redouble efforts to reach rural communities to ensure that these people participate in programs and facilitate access to the internet and internet training for all undocumented populations, since individuals without access to computers are disadvantaged when an immigration program such as DACA is based primarily online.


\textsuperscript{63} For example, USCIS might state “X months following submission, you will receive an acknowledgement of receipt; Y months following submission, you will receive an assignment of office; and Z months following submission you will receive a decision or a delayed timeline for decision.”
• Encourage Attorneys to Aid Applicants For Reduced Fees or On A Pro Bono Basis.

The administrative challenges of processing applications for any expanded program offering legal status are daunting. At the same time, the potential benefits of obtaining deferred action, green cards and potentially citizenship command the attention of lawyers, as officers of the Court, to ensuring that potential beneficiaries have access to counsel and assistance in making their applications.

More than fifty years ago, the Supreme Court recognized in *Gideon v. Wainwright* the fundamental due process right in having counsel in state criminal trials. The reasoning of Justice Black, writing for a unanimous Court, is in many respects applicable to an administrative process in which someone’s right to stay in perhaps the only country they know or have is at stake:

From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. A defendant’s need for a lawyer is nowhere better stated than in the moving words of Mr. Justice Sutherland in *Powell v. Alabama*:

“The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.”

A CALL TO ACTION

Appleseed calls upon the bar, the philanthropic community and the government to make every effort to ensure that future applicants have the assistance of counsel in making their applications. How?

- Major law firms, in concert with NGOs, should organize clinics where pro bono counsel could run clinics and assist potential applicants.
- Immigration counsel should provide deeply discounted services to those who cannot afford counsel.
- Grants for nonprofit justice centers proposed in the RPI program are a step in the right direction.
- USCIS should consider working with state bar associations that require continuing legal education credits to offer CLE credit for the provision of pro bono service to advise and assist persons considering filing DACA, DREAMer or RPI applications.
- Creative programs that allow for matching of pro bono counsel to clients remotely, and “meeting” by email or other electronic means should be expanded to meet the needs of millions of potentially eligible persons, especially the rural populations identified repeatedly in our interviews as needing legal services.
- Bar rules should be adjusted, if necessary, to allow for limited scope representation, unbundled legal services, volunteer lawyer for a day programs, and pro se clinics staffed by trained lawyers who could provide assistance to potential applicants.

In sum, we need to have an integrated strategy of outreach and organizing, communications, policy and law to provide high-stakes, high-quality legal advice and assistance to help on a grand and historic scale. We can and should learn from the experience of rolling out DACA to build an even bigger and more effective system of delivering legal services to millions of aspiring American applicants. When the long-overdue time comes for providing legal relief to millions of neighbors and coworkers who are already an important part of the social and economic fabric of the country, lawyers individually and the profession as a whole should stand ready to help.
This report does not constitute legal advice and creates no attorney-client relationships. While we have made every effort to be clear about the timing and extent of our research, persons trying to understand DACA or any other immigration program are reminded that the law, policies, practices and regulations we discuss in this report are continuously being updated and may vary in different jurisdictions. For individual cases, we encourage readers to seek the advice of counsel and not rely on this report for representation.

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