

LexisNexis® Emerging Issues Analysis

**Dan Berger and Stephen Yale-Loehr on
Deferred Action for Childhood Arrivals: Should Undocumented Young
People Apply?**

2012 Emerging Issues 6632

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It is hard to believe that just a few months ago President Obama announced the Deferred Action for Childhood Arrivals (DACA) program.¹ Since then immigration lawyers, legal aid clinics, and immigrants rights organizations have been scrambling to react. How do we responsibly screen over one million young people for an unprecedented program with an uncertain future? How do we mentor the inexperienced immigration attorneys who want to take these cases? How can we encourage undocumented youth to help their own (as they have been for years) without straying into unauthorized practice of law? Should we worry about the upcoming presidential election?

Overall, the immigration law community has mounted an impressive effort to address these questions. This Emerging Issues Analysis presents a summary of the DACA program, highlights areas of uncertainty, and offers practice tips for attorneys.

BACKGROUND

There are roughly twelve million undocumented immigrants in the United States. Of them somewhat less than ten percent are “DREAMers” – those who came to the United States as children, had little or no involvement in the decision to immigrate, have grown up in the United States, are fully assimilated here, have some education in the United States, and would like to get more.² For over a decade, Congress has considered but failed to pass the Development, Relief, and Education for Alien Minors (DREAM) Act, which would provide immediate legal status and then a gradual path to permanent residence for these young people.³

In the run-up to the presidential election this year, President Obama made a surprise announcement. On June 15, 2012, he offered temporary relief in the hope that

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- 1 White House, *Deferred Action for Childhood Arrivals: Who Can Be Considered?* (Aug. 15, 2012), <http://www.whitehouse.gov/blog/2012/08/15/deferred-action-childhood-arrivals-who-can-be-considered>; Memorandum from Janet Napolitano, Secretary of Dep't of Homeland Security, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* (June 15, 2012), <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>, reprinted at 17 *Bender's Immigr. Bull.* 1359, 1374 (App. A) (July 1, 2012).
 - 2 See generally DREAM Act Portal, <http://dreamact.info>.
 - 3 The current version of the DREAM Act is S. 952, introduced on May 11, 2011.

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Congress will enact a longer-term solution.⁴ Under the new program, individuals who receive DACA relief will have their removals deferred for two years. They will also be eligible for work permits.

Over the next two months, the Department of Homeland Security (DHS) made a serious and largely successful effort to develop guidelines, engage about issues of concern, and conduct outreach. On August 15, 2012, the U.S. Citizenship and Immigration Services (USCIS) began accepting DACA applications.⁵ The first approvals have started to come just this week. The initial number of applications seems to be low, but we predict that many will file for DACA. One organization has estimated that up to 1.7 million people may qualify for DACA.⁶

Before launching into the details of the program, note what DACA is not. It is not a green card, it is not a visa, it is not a status, and it is not a benefit. Rather, it is a wholly discretionary, temporary program based on principles of prosecutorial discretion.⁷ There are guidelines, but the USCIS is not required to grant DACA where cases meet the guidelines. Some have analogized this to a stay or a nonimmigrant waiver under Immigration and Nationality Act (INA) § 212(d)(3):⁸ a discretionary grant of short-term relief.

While DACA came out of the blue for the DREAMer community, it is a variation on a theme for immigration lawyers.⁹ Over the years we have seen other programs such as temporary protected status (TPS), the Nicaraguan Adjustment and Central American Relief Act (NACARA), and relief under INA § 245(i).¹⁰ Those experiences inform our response to DACA.

BASIC ELIGIBILITY REQUIREMENTS

4 Julia Preston & John H. Cushman Jr., *Obama to Permit Young Migrants to Remain in U.S.*, N.Y. Times, June 15, 2012, <http://www.nytimes.com/2012/06/16/us/us-to-stop-deporting-some-illegal-immigrants.html>.

5 USCIS, Consideration of Deferred Action for Childhood Arrivals Process [hereinafter USCIS DACA Process], <http://www.uscis.gov> > [Humanitarian](#) > [Consideration of Deferred Action for Childhood Arrivals Process](#).

6 Jeanne Batalova & Michelle Mittelstadt, Migration Policy Institute, Relief from Deportation: Demographic Profile of the DREAMers Potentially Eligible under the Deferred Action Policy (Aug. 2012), http://www.migrationpolicy.org/pubs/FS24_deferredaction.pdf.

7 Immigration Policy Center, Prosecutorial Discretion and Executive Action: A Resource Page, <http://www.immigrationpolicy.org/just-facts/prosecutorial-discretion-and-executive-action-resource-page>.

8 [8 U.S.C. § 1182\(d\)\(3\)](#).

9 For an overview of deferred action generally, see Charles Gordon, Stanley Mailman, Stephen Yale-Loehr & Ronald Y. Wada, Immigration Law and Procedure § 72.03 [h] (2012).

10 [8 U.S.C. §1255\(i\)](#).

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Unauthorized individuals who meet the following criteria should be eligible to apply for DACA. The USCIS has done an excellent job of providing information about these criteria and the evidence required. Every DACA practitioner should bookmark this website: www.uscis.gov/childhoodarrivals.

Age	<ul style="list-style-type: none"> • Must be between the ages of 15 and 30 (under 31 years old as of June 15, 2012). • Must have arrived in the United States before age 16 (youth under 15 years old can qualify if in removal proceedings, have a voluntary departure order, or have been ordered removed and are not currently in detention).
Continuous Presence	<ul style="list-style-type: none"> • Must have been continuously present in the United States for at least 5 years, since June 15, 2007. • Must have been present in the United States on June 15, 2012. • Deferred Action will <i>not</i> be granted to individuals who leave and re-enter the country after August 15, 2012.
Education or military service	<p>At least <i>one of the following</i> must be true:</p> <ul style="list-style-type: none"> • <i>You are currently in school.</i> This includes vocational programs or any school that is “designed to lead to placements in a job or further education.” If the school is not publicly funded, DHS will look at the “demonstrated effectiveness of the program.” These educational requirements are generous, but do not include schools set up to help DREAMers qualify for DACA. • You have earned a general education development (GED) or high school diploma. • You have been honorably discharged from the U.S. armed forces.
Criminal record	<p>Any one of the following will make you <i>ineligible</i> for DACA:</p> <ul style="list-style-type: none"> • felony • significant misdemeanor

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	<ul style="list-style-type: none"> • three or more misdemeanors of any kind <p>If you are considered a threat to national security or public safety (not clearly defined), you are not eligible <i>and are at increased risk</i> for removal.</p>
Immigration status	<ul style="list-style-type: none"> • Must have entered without inspection or had your lawful immigration status expire before June 15, 2012.

FILING PROCEDURES

DACA requires three forms:

- the new Form I-821D (not the regular I-821);
- the current version of the generic work card application Form I-765; and
- Form I-765-WS, a new DACA-specific worksheet about the need for work authorization.

We recommend that private attorneys file two Form G-28s – one with the I-821D and one with the I-765. Volunteer attorneys and law clinics generally should not submit G-28s. The USCIS makes all forms available at uscis.gov by clicking on the FORMS tab, which also provides detailed information about the filing fee (currently \$465 including biometrics) and lockbox filing addresses.

DACA applications do not qualify for USCIS fee waivers. However, there are some limited fee exemptions for those who are under eighteen, are homeless, are in foster care, lack parental support, have incomes less than 150% of the federal poverty guidelines, cannot care for themselves because of chronic disability, or have accumulated very serious medical-related debt. Submit a separate fee-exemption letter, which must be approved before a DACA request can be filed without a fee. It may take a while to review fee-exemption requests. Paying the normal filing fee up front, if possible, will avoid delay and uncertainty.

The application also requires two identical passport-style photos, along with documents to support each element of DACA. The USCIS will acknowledge receipt with two I-797 notices sent by mail to the applicant and the attorney of record (if applicable): one for

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the I-821D and one for the I-765. Biometrics, i.e., an appointment for fingerprinting, will be scheduled separately, likely a month or so after application.

The USCIS has released filing tips for DACA applicants.¹¹ They include:

- **Write your name and date of birth the same way on each form** – Variations in the way information is written can cause delays. For example, you should not write Jane Doe on one form and Jane E. Doe on another form. It is important to read all instructions on the forms carefully.
- **Do NOT e-file Form I-765** – Requests for consideration of deferred action cannot be e-filed.
- **Answer all questions completely and accurately** – If an item is not applicable or the answer is “none,” leave the space blank.
- **If you make an error on a form, start over with a clean form** – Scanners will see through White Out or correction tape.

The USCIS will adjudicate DACA applications at its four regional service centers.¹² If needed, the USCIS will issue a request for further evidence, most likely with a thirty-day time frame to respond. For more complex cases, or for random quality control, the USCIS will schedule an interview at a local field office. If the USCIS denies the case, there is no appeal or motion, although the individual can apply again. Those denied may be issued a notice to appear in immigration court if they are suspected of fraud or misrepresentation on the DACA application or if they fit within general removal enforcement criteria.¹³

UNRESOLVED OR THORNY ISSUES

Several nonprofits have developed excellent guides that address tough DACA issues.¹⁴ DACA presents so many permutations of facts that we strongly recommend reviewing these guides.

11 USCIS, Filing Tips: Deferred Action for Childhood Arrivals, <http://blog.uscis.gov/2012/08/filing-tips-deferred-action-for.html>.

12 USCIS DACA Process, *supra* note 5; Educators for Fair Consideration, Guide for DREAMers Applying for DACA (updated Sept. 1, 2012), <http://www.e4fc.org/dacaguide.html>.

13 See generally Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement, to all field offices, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (June 17, 2011), <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>, reprinted at 16 *Bender's Immigr. Bull.* 1218, 1236 (App. C) (July 15, 2011).

14 See, e.g., Catholic Legal Immigration Network, Inc., CLINIC Resources on Deferred Action for Childhood Arrivals, <http://cliniclegal.org/resources/deferred-action-childhood-arrivals>; Immigrant Legal Resource Center, Deferred Action for Childhood Arrivals, <http://www.ilrc.org/info-on-immigration-law/deferred-action-for-childhood-arrivals>; Legal Action Center et al., Practice Advisory, Deferred Action for Childhood Arrivals (Aug. 20, 2012) [hereinafter DACA Practice Advisory],

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Here are some of the most common issues:

- **Should a false Social Security number be entered on the I-765, which asks for “all Social Security Numbers ever used”?**

Some practitioners are not including Social Security Numbers (SSNs) unless properly issued for the applicant by the Social Security Administration, and are also reviewing DACA supporting documents to remove evidence of a false SSN. This caution is because state and/or federal laws make it a crime to use a false SSN, which may also qualify as identity theft. Another approach we have seen involves full disclosure of a false SSN. Attorneys should discuss use of a false SSN with their clients for DACA eligibility, future immigration benefits, and potential criminal liability.

- **Can I get a driver's license with DACA?**

This depends on the state. In many cases, lack of a Social Security number is the major obstacle in gaining various benefits. The federal REAL ID Act¹⁵ lists those granted deferred action as comprising a category eligible for a driver's license, but states may impose additional requirements. For example, the California Department of Motor Vehicles has still not given a clear answer about whether a DACA recipient can obtain a driver's license in that state.¹⁶

- **Can I get in-state tuition or other government benefits?**

We are not sure whether you will be able to get a license to be a professional, such as a teacher or social worker. That will vary state by state. In-state tuition eligibility also varies by state.¹⁷

The Department of Health and Human Services (HHS) has published a rule that excludes DACA individuals from key provisions of the Affordable Care Act.¹⁸ Similarly,

http://www.legalactioncenter.org/sites/default/files/practice_advisory_dreamers_8-13-12_fin_0_2_0.pdf; Nat'l Immigr. Law Center, Frequently Asked Questions: Obama Administration's Relief Process for Eligible Undocumented Youth (Aug. 15, 2012), <http://www.nilc.org/FAQdeferredactionyouth.html>.

15 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, div. B. § 202(c)(2)(B)(viii), 119 Stat. 231, 302-23 (May 11, 2005) (codified as a note to [49 U.S.C. §30301](#)).

16 Matt O'Brien, *Driver's Licenses for Some Illegal Immigrants Flares Into Burning Question*, *Contra Costa Times*, Aug. 21, 2012, http://www.mercurynews.com/nation-world/ci_21355140/dmv-waffles-licenses-some-young-illegal-immigrants.

17 Nat'l Immigr. Law Center, Basic Facts about In-State Tuition for Undocumented Immigrant Students (Jan. 2012), <http://www.nilc.org/basic-facts-instate.html>.

18 [77 Fed. Reg. 52,614](#) (Aug. 30, 2012).

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the HHS has issued a memorandum that prevents children or pregnant women approved for DACA from enrolling in government health insurance under Medicaid or the Children's Health Insurance Program.¹⁹ The National Immigrant Law Center offers more details and discussion on this emerging issue.²⁰

- **Is international travel safe after DACA is approved?**

International travel after August 15, 2012, is not permitted until DACA is granted *and* a separate application for advance parole travel documents has been approved. The USCIS has stated that it will grant advance parole for "humanitarian, education or work purposes,"²¹ which seems relatively lenient.

However, assuming it will take at least a few months for approval of the first DACA cases and a few more months until the first advance parole documents arrive, we recommend waiting before considering travel. DACA is discretionary, and there are unresolved and emerging issues about triggering the three- or ten-year unlawful presence bar through travel.²²

A recent decision by the Board of Immigration Appeals held that a departure from the United States with advance parole by a pending adjustment of status applicant does not trigger the unlawful presence bar under INA § 212(a)(9)(B)(i)(II).²³ Practitioners differ on whether the holding of that case will apply in the DACA context.²⁴

At this point, we recommend that DACA applicants who wish to travel apply for a travel document after receiving DACA relief. After receiving advance parole the applicant can evaluate the need for travel against the then-current understanding of the risks of travel before leaving the United States.

- **Does guidance listing (1) end of lawful status or (2) entered without inspection as those who qualify for DACA significantly limit the applicant pool?**

19 Memorandum from Cindy Mann, Director, Centers for Medicare & Medicaid Services, Dep't of Health & Human Services, *Individuals with Deferred Action for Childhood Arrivals* (Aug. 28, 2012), <http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-12-002.pdf>, reprinted at 17 *Bender's Immigr. Bull.* 1656, 1672 (App. C) (Sept. 15, 2012).

20 Nat'l Immigr. Law Center, *Frequently Asked Questions: Deferred Action for Childhood Arrivals (DACA) and Restricted Access to Health Care* (Aug. 29, 2012), <https://nilc.org/document.html?id=802>.

21 USCIS DACA Process, *supra* note 5.

22 See generally C. Gordon et al., *Immigration Law and Procedure* § 63.10 .

23 *Matter of Arrabally*, 25 I. & N. Dec. 771 (BIA 2012).

24 Gary Endelman & Cyrus D. Mehta, *Through the Looking Glass: Adventures with Arrabally and Yerrabally in Immigration Land* (Aug. 12, 2012), <http://blog.cyrusmehta.com/2012/08/through-looking-glass-adventures-with.html>.

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We cannot be sure, but we believe that this was inartful drafting and that the goals of DACA encompass those who entered with a false visa or passport (as is common in this population), as well as those who have a pending application with the USCIS or are otherwise in a period of status authorized by the Attorney General. Practitioners should evaluate these cases carefully. Someone who entered with a false passport may qualify for DACA, and the issue may not even emerge on the I-821D (which asks only for status on entry, and offers “unlawful status” as an option). But immigration fraud, or worse, a false claim to U.S. citizenship, is a more serious long-term issue. Moreover, a parent or guardian who orchestrated the false documents could also face liability.

The drop-down menu on Part 1 Question 15 of the I-821D form offers an option of suspected document fraud (SDF) buried in the long list of options to indicate status at entry. Practitioners will have to make a judgment call about whether to list “unlawful” or SDF as the manner of entry. At least one local USCIS office has informally suggested that “unlawful” is accurate in this situation, and that the manner of entry is not relevant to DACA adjudication. We tend to agree.

- **What is a significant misdemeanor?**

“Significant misdemeanor” is a new term of art in immigration law. The USCIS created this term for DACA, and has provided some initial guidance.²⁵

It does not cover minor traffic violations or driving without a license. State-specific immigration offenses will generally not be counted. Nor will any crime punishable by less than five days of imprisonment.²⁶ The guidance does not mention simple assaults, drug possession, and various other minor crimes as “significant misdemeanors.” But this is a discretionary program, and the USCIS still may determine that certain actions make a student a threat to public safety and deny the application.

The USCIS will treat convictions for driving while intoxicated seriously, as well as any suspected gang membership.²⁷ The USCIS will review juvenile offenses and expunged records on a case-by-case basis.²⁸

25 USCIS DACA Process, *supra* note 5.

26 *Id.*; USCIS, [DACA] Frequently Asked Questions [hereinafter USCIS DACA FAQ], <http://www.uscis.gov> > [Humanitarian](#) > [Consideration of Deferred Action for Childhood Arrivals Process](#) > [Frequently Asked Questions](#) (scroll to National Security and Public Safety section).

27 USCIS DACA FAQ, *supra* note 26.

28 *Id.*

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Since all fingerprinting events will likely show up on the biometrics check, we recommend providing clear documentation of any incident that led to fingerprinting.²⁹ Individuals should consider obtaining a criminal background check about themselves from the Federal Bureau of Investigation before applying for DACA if there are any concerns or uncertainty.³⁰

- **What standard will the USCIS adopt for “brief, casual and innocent” absences from the United States during the required five-year period of continuous residence?**

At this point, we do not know. The Supreme Court has held that a trip abroad does not break the continuity of residence if it was “innocent, casual, and brief.”³¹ We hope that the case law developed from this concept will also apply to the DACA program.³²

- **What kinds of schools qualify for DACA?**

The USCIS has provided advice on the “currently in school” standard.³³ Students can qualify by going back to school now, which includes signing up for a GED, literacy, or vocational program with a specific career or educational objective. The school must be pre-established and not designed specifically for DACA applicants.

Note that this substantially increases the population of young people who qualify for DACA, as anyone between the ages of fifteen and thirty who entered the United States before age sixteen, has the five years of continuous presence, and was in the United States on June 15, 2012, can now start taking classes.

- **Are undocumented family members who are ineligible for DACA in any danger?**

From everything we have read and our experience with other programs such as TPS, we do not believe that other family members are at greater risk if one of the family applies for DACA.

29 See generally DACA Practice Advisory, *supra* note 14.

30 Federal Bureau of Investigation, Identification Record Request/Criminal Background Check, <http://www.fbi.gov/about-us/cjis/background-checks>.

31 Rosenberg v. Fleuti, 374 U.S. 449, 462 (1963).

32 See generally C. Gordon et al., Immigration Law and Procedure § 10.05 .

33 USCIS DACA FAQ, *supra* note 26.

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On an August 14, 2012, USCIS stakeholder call, USCIS Director Alejandro Mayorkas explained that if a DACA application is denied and the case is referred for enforcement or immigration court proceedings, the USCIS will not share family or guardianship information from the DACA application to try to remove other family members. However, that information can still be shared with other branches of government to investigate fraud or for public safety concerns.³⁴ Practitioners should discuss the situation of undocumented family members with the DREAMer before filing a DACA application.

- **How much economic hardship must be demonstrated to qualify for a work permit?**

We hope that the USCIS will be relatively lenient when assessing a DACA applicant's economic need. This hardship criterion stems from the general deferred-action relief from which DACA emerged.³⁵

We recommend that even DREAMers who can support themselves now by working without authorization should apply for DACA. On the last question on the I-765WS, list anything that could show a need for work authorization: debts from school, family members who need support, medical bills, inability to work in your field, and future goals (education or career). This open-ended question offers a chance to personalize the application a bit.

PRACTICAL ADVICE

Despite the rush to sign up eligible students, keep in mind basic legal ethics. Be careful about potential conflicts of interest, such as if DACA supporting evidence implicates a current or former business client who has employed or is employing unauthorized aliens. Also, some practitioners have considered specific waivers for clients to sign showing that the clients understand the uncertainties and risks inherent in DACA. Practitioners should balance the potential chilling effect of having an upfront conflict check and detailed waiver versus protection from liability and complying with legal ethics requirements.

Be creative in providing evidence to meet the DACA criteria. The USCIS website has detailed guidance on affidavits. They can help bridge a gap in evidence for five years of

³⁴ *Id.*

³⁵ See generally C. Gordon et al., Immigration Law and Procedure § 72.03 [h].

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continuous residence, but cannot support a claim of entry before the age of sixteen.³⁶ If school, medical, or financial records are not available, look for anything you can find – Facebook postings, orders from Amazon, Skype calls, or even photos of events that took place at a particular time or in front of businesses that no longer exist. Students who have been in school continuously will be relatively easy cases. Those who are now going back to school after living in the shadows will have a more difficult time.

To help streamline intakes, we recommend having clients use self-assessment tools before the initial consultation.³⁷ Many potential DACA applicants can navigate the Internet and have sufficient English skills to do this.

An immediate question for private attorneys and legal service organizations is how to triage cases. Filing DACA cases is a risk that is almost impossible to assess. DACA requires a leap of faith that getting a work permit and coming out of the shadows is worth the uncertainty about the future.

These risks present themselves differently, but as a starting point it helps to sort DACA cases into three main categories:

- 1. Those who have clean records, with no criminal or immigration court issues.** These people should consider filing for DACA right away. The line will probably be very long, and it makes sense to try to get nearer to the front of the line. Even if the program ends after the election, these young people will probably be a very low priority for enforcement, and having a work permit may help set up opportunities to move into legal status or build equities toward discretionary relief.
- 2. Those who are clearly ineligible.** They should not apply, but can still use the DACA consultation as an opportunity to explore other options and understand their immigration situations.³⁸ These include students who came to the United States after age sixteen, are over thirty years old, have not been in the United States for five years, have a disqualifying criminal issue with no strong countervailing equities, or cannot meet the school requirement.

³⁶ USCIS DACA FAQ, *supra* note 26.

³⁷ Examples of DACA self-assessment tools are at <http://www.weownthedream.org> and <http://www.dreamerjustice.org>.

³⁸ For a guide to longer-term options, see Educators for Fair Consideration and Curran & Berger LLP, Beyond Deferred Action: Long-term Immigration Remedies Every DREAMer Should Know About, http://www.e4fc.org/images/E4FC_BDAGuide.pdf.

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3. Those with serious issues, but who are still eligible to apply for DACA. These are the tough cases. If the program ends, and the individual is subject to the permanent bar, has been ordered removed, or has minor criminal issues, he or she could face enforcement. These cases need to be counseled to weigh their options: either apply now before the election while the program is here, or wait and see. Such counseling can be a particularly delicate challenge if the client is on the younger end of the required age range. Parents may be particularly concerned about having their children apply for DACA with an outstanding order of removal, for good reason. We are still filing some of these cases, in part because remaining under the radar after having been ordered removed holds its own risks – those who were ordered removed and have not left the United States rank high on the government priority list for enforcement. And young people are increasingly easy to track, as they often have an Internet footprint.

Our gut feeling, after watching similar programs for many years, is that those who fall into the first category face very little risk if they apply for DACA. The USCIS has generally allowed people to apply for benefits and file immigrant visa petitions even if they are undocumented. And often, over time, the temporary status may morph into a longer-term program. For example, the Salvadoran TPS program evolved into NACARA. We also believe that targeting this population would be politically unwise if Mitt Romney is elected president.

That said, if President Obama is not reelected, if there is another terrorist attack, or if unemployment skyrockets again, we could see a wave of anti-immigrant sentiment that could have any number of bad consequences.

Note that high school students may want to put off applying, but DACA applications and relief toll unlawful presence. A child under the age of eighteen will not have started to accumulate unlawful presence, so that a DACA application may prevent the three- and ten-year bars from complicating future immigration applications.

The bottom line: Yes, this is scary, and each person should make his or her own informed decision. A veterinarian once offered some advice about choosing a puppy. If the puppy is raised slowly up in the air, the puppy should ideally be a balanced mix of nervous, confused, and excited. Applying this to the DACA context, if a client is a showing a balanced mix of trepidation, uncertainty, and enthusiasm, the consultation

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was a success and the client is well positioned to make an informed decision about whether to apply.

See generally [Charles Gordon et al., Immigration Law and Procedure § 72.03](#); [Shoba Sivaprasad Wadhia, Prosecutorial Discretion in Immigration Agencies: A Year in Review, 2012 Emerging Issues 6173 \(on lexis.com\)](#); [Shoba Sivaprasad Wadhia, Reflections on Prosecutorial Discretion One Year After the Morton Memo, 2012 Emerging Issues 6417](#).

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