

# DACA, Undocumented Students, and Financial Aid: What You Need to Know to Help Support Students



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*This presentation is for informational purposes only and should not be considered legal advice.*

# Roadmap

1. Overview of Existing Immigration Law
2. Why can't undocumented students just "get legal?"
3. Impact on higher education and financial aid

# Nonimmigrant Visa Categories

- Visitor Visas: B1/B2, Visa Waiver
- Work visas: H, I, L, E, O, P, Q, R
- Government visas: A, G, C
- Student visas: F, J, M, and OPT
- TN for Canada and Mexico
- S, T, U for victims of violent crimes and VAWA for victims of domestic violence
- K fiancé visas

# Immigrant Visa Categories

- Lawful Permanent Resident (LPR) a.k.a. “green card”
- Immediate relatives, family based and employment based preference categories
- Employment Authorization Document (EAD) and Advance Parole are ancillary benefits
- Asylee or Refugee
- Naturalization to become US citizen after 3-5 years as LPR

# Undocumented Immigrants: Two Types

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- Overstay
- Entry Without Inspection (EWI)

## Immediate relative (IR) of a US citizen

- Only an immediate relative can adjust status in the U.S. if visa **overstay**
- Immediate relative is defined as:
  - Children, spouses and parents of USC
  - If applying for a parent, USC son or daughter must be at least 21 years old
  - If applying for a child, child must be under 21 and unmarried

# EWI Immediate Relative

- Cannot adjust status in the U.S.
- Must leave the U.S. and apply for a waiver of the 10 year bar and prove extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent
- But 212(a)(9)(c) a.k.a. “9C”
- Unless 245(i)
  - April 30, 2001, or before

# Family-Based Preference Categories for Permanent Residency

- First: Unmarried sons and daughters of US citizens (over 21)
- Second: Spouses and children, unmarried sons and daughters of permanent residents
- Third: Married sons and daughters of US citizens (over 21)
- Fourth: Brothers and sisters of adult citizens



# Employment-Based Preference Categories for Permanent Residency

- First: Extraordinary Ability, Outstanding Professors/Researchers, Multinational Executives or Managers
- Second: Advanced Degree or Exceptional Ability
- Third: Skilled Workers, Professionals and other
- Fourth: Special Immigrants, Religious Workers
- Fifth: Employment Creation (Investors)

## *So, why can't they just "get legal?"*

- **Backlogs** of 5-20 years for family and employment based permanent immigration categories (see *U.S. Department of State Visa Bulletin*)
- **EWI** ineligible for adjustment of status in the US
- **3 and 10 year bars for unlawful presence**  
....can't stay and can't go
- 9(C) Illegal reentry after unlawful presence of at least one year or prior deportation = 10 year bar with no waiver
- Lack of employment-based nonimmigrant visas (**H-1B 85,000 cap**, investor visa threshold, lack of lower skilled and labor visas)

## Lack of immigration status leads to...

- Ineligible for Social Security number (but may get an Individual Tax ID Number or ITIN)
- Ineligible for driver's license or state ID card
- Decreased access to college, professional licensure and ineligible for state or federal financial aid
- Limited healthcare coverage (ER only)
- Ineligible for public assistance and unemployment benefits
- Mixed status families: one family member is stuck
- Perceived lack of legal remedies
- Impact on emotional and mental health

# Deferred Action for Childhood Arrivals (DACA)

## Requirements:

- Entered U.S. before 16;
- 5 years of continuous residence and physical presence in the U.S. since June 15, 2007, and on June 15, 2012;
- Enrollment in or graduation from high school or other qualifying educational program or obtained GED;
- No convictions for felonies, multiple misdemeanors, or significant misdemeanors; and
- At least 15 at time of filing and not older than 30 on June 15, 2012.

# What does DACA do?

- Two year employment authorization
  - Can get SSN and driver's license
  - Renewable biannually
- Two year grant of prosecutorial discretion to defer removal action
- “Lawfully present” but no “lawful status”

## What does DACA not do?

- Not a path to permanent residence or U.S. citizenship
- No “lawful status” in the U.S.
- Not eligible for federal financial aid or governmental assistance; State financial aid depends on state law (CA, NM, MN, TX, WA allow state financial aid)

# DACA and In-State Tuition

- DACA recipients are considered to be “lawfully present”
- Granting DACA students in-state tuition does not violate state or federal law
- May not be eligible for professional licensure depending on state and federal law

# Work After College?

- DACA students have work authorization
- Other undocumented students are currently ineligible. However:
  - Immigration laws will change
  - May be eligible for immigration benefit in future
  - May already have pending application and process could take many years
  - If return to country, they will be highly marketable with U.S. degree



## Future of DACA uncertain

- 16 states challenging DACA rescission and two courts have ruled that applicants may renew and possibly submit new applications
- Over 700 university presidents and chancellors signed the Pomona College letter supporting the continuation of DACA and protection for DACA students

# Financing College for DACA and Undocumented Students

- At least 20 states allow DACA and undocumented students eligibility for in-state tuition
- DACA students are “lawfully present” in the U.S. and may be eligible for in-state tuition
- At least 5 states allow state financial aid: CA, NM, MN, TX, WA
- Students should be advised according to their state of residence and particular institutional policies

# Funding Sources and Options for DACA Students

- Private and Foundation Scholarships
- School Scholarships and FAFSA
- Private Loans
- Working for a University
- Payment Plans
- Alternatives to a Four-Year Degree

# Private and Foundation Scholarships

- Noncitizen students may be eligible depending on source of funds and donor intent
- Local community organizations, individuals, private foundations
- University foundation unrestricted funds
- Never provide false information or claim to be a U.S. citizen

# Resources for Undocumented and DACA Students

- Local foundations like Central Indiana Community Foundation: [www.cicf.org](http://www.cicf.org)
- Educators for Fair Consideration: [www.E4FC.org](http://www.E4FC.org)
- Local non-profits like La Plaza Scholarship List: <http://www.laplazaindy.org/portfolio-item/scholarship-fund/>
- Local private funds like Indiana Latino Scholarship Fund (ILSF): <https://www.indianalatinoscholarshipfund.org/>
- University foundations

# Sanctuary Campuses?

- Not defined by law
- Premature to declare
- May hinder university's ability to advocate for students
- Universities can require a subpoena for information not required by law
- FERPA and HIPAA protections
- SEVIS for international students
- FAFSA information?

# Unauthorized Practice of Law (UPL)

- Consult trusted sources
- Beware of “Notario” fraud
- Seek advice from a qualified immigration professional or attorney and pay attention to changes in law and changes in interpretation of law and policy
- American Immigration Lawyers Association (AILA) to search for qualified attorneys  
[www.ailalawyer.org](http://www.ailalawyer.org)

## Questions for Group:

- What are the differences between institutional aid, state aid, private aid, foundation aid and what are the rules on what can and can't be used to support undocumented students?
- What are employment rules for undocumented and DACA students?
- Can an undocumented student without a SSN file for FAFSA?
- Are there colleges across the country doing things well?



# Questions?

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