

WORKING PAPERS

Creating Deportability: New Migration Policy Developments in the United States

Hiba Rasheed & Naheed Nero

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Abstract

This working paper analyzes how deportability functions as a tool of control in U.S. immigration policy. It focuses on two key developments: the Trump administration's use of the *Alien Enemies Act* to justify mass deportations, and the ongoing legal uncertainty facing DACA recipients. Both illustrate how the law is used not just to remove, but to marginalize and destabilize non-citizens. The paper assesses the legal basis of these measures and their alignment with constitutional and human rights norms. It concludes by reflecting on the broader implications for migration governance in North America, including Canada's role.

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1. Introduction

Deportability has become a defining feature of contemporary migration governance, and is less about who is actually deported and more about who lives under deportation's looming threat. As Nicholas De Genova (2022) explains, deportability is "the possibility of deportation" that functions as a form of control, producing a condition of vulnerability and marginalization. The U.S. Deferred Action for Childhood Arrivals (DACA) program exemplifies this condition, offering undocumented youth temporary reprieve yet leaving them in a state of perpetual uncertainty, without legal status or a pathway to citizenship. While DACA recipients have lived in the U.S. for most of their lives, they remain in legal limbo, permitted to work and study but always at risk of losing their status with a change in administration or a court ruling. In contrast, migrants crossing the southern U.S. border, often framed as threats in social and political discourse, face more aggressive enforcement including new efforts to revive the *Alien Enemies Act* to authorize mass deportations without due process. These examples reveal how deportability operates both as a precarious status and as a tool of state control shaped by political narratives. DACA recipients receive temporary relief yet remain vulnerable to policy reversals, while the current interpretation of the *Alien Enemies Act* enables mass expulsions of groups posed as threats to the state. Both examples illustrate how deportability transcends the act of removal by cultivating a perpetual state of uncertainty and exclusion.

This paper uses a legal perspective to examine recent developments in U.S. policy targeting unauthorized immigration affecting roughly 11 million people living in the United States, including those who entered without inspection or overstayed valid visas (Passel & Krogstad, 2024). More specifically, we analyze, on one hand, the invocation of the *Alien Enemies Act* with a view of facilitating large-scale deportations of immigrants without citizenship and, on the other hand, the status of DACA permit holders whose status is at best precarious. The aim of this paper is to assess the legal instruments governing these policies, evaluate their compliance with constitutional and international norms, and trace a possible way forward for lawmakers, advocates, and courts committed to safeguarding due process and human rights in migration governance. As the U.S. intensifies an environment of discrimination and deportability, Canada must also confront its legal obligations and moral responsibilities within a shifting North American migration landscape.

This paper is divided into two main sections. The first examines the Trump administration's 2025 invocation of the *Alien Enemies Act*, while the second explores the history and current status of DACA. Both sections analyze legal and judicial sources, highlighting existing safeguards as well as loopholes and their consequences. The focus on the *Alien Enemies Act* and the rescission of DACA is deliberate, as they represent distinct yet interconnected facets of a broader strategy to marginalize immigrants through legally tenuous means. The *Alien Enemies Act* provides a foundational legal pretext for the current administration's aggressive tactics, exemplifying the expansion of executive power under the pretense of national security. In contrast, the targeting of DACA recipients, individuals deeply embedded in U.S. society and the economy, reveals how immigration policy has been weaponized for political optics, stripping protections from a group with no clear justification beyond symbolic exclusion. Together, these cases accentuate how legality is selectively invoked or manipulated to justify exclusionary measures. The paper concludes with critical reflections on the broader implications of these issues, emphasizing how they illustrate two core strategies in contemporary immigration control: the amplification of executive authority to enable mass removals, and the continued reliance on precarious, non-legislative protections for long-term residents.

2. From Battlefield to Borders: Trump's Invocation of the *Alien Enemies Act*

After almost 80 years, President Donald Trump is dusting off the *Alien Enemies Act* and reviving this wartime relic to wage a new war against illegal immigration. His pledge to implement the largest deportation initiative in United States history has energized his base and become the primary mandate of his return to office in 2025 (Dorn & Bohannon, 2025; Puzzanghera, 2025). This agenda has been vigorously pursued at every level of the administration, from the appointment of immigration hardliners in senior roles to numerous executive orders aimed at expediting removals. Footage of the migrant crackdown is regularly shared on the White House's official X account and proudly displayed on the White House lawn as a public deterrent, using dehumanizing imagery that blurs the line between policy and performance (Watson, 2025). As the political climate becomes even more divided over the contentious issue of immigration reform, the central question of due process in carrying out this mass deportation plan has largely been ignored. What is Trump's radical solution? Invoke the *Alien Enemies Act* to render this question obsolete.

Controversial even at its inception in the 18th century, the *Alien Enemies Act* was drafted for wartime use and granted the president broad powers to detain, relocate, and expel foreign nationals tied to enemy states (Treisman, 2024). Now, Trump is employing this archaic statute for the first time since World War II to bypass judicial oversight and cement his administration's legacy of record-breaking deportations. For years, Trump has framed immigration as a national emergency and laid the groundwork for this extraordinary executive action (The White House, 2025). Legal scholars were sceptical about his ability to apply the *Act* in an immigration context without immediate judicial intervention, denouncing it as legally untenable and inappropriate (Pedro, 2025; Reisz, 2025). Nevertheless, on March 15, 2025, Trump issued a proclamation titled "Invocation of the *Alien Enemies Act* Regarding the Invasion of the United States by Tren De Aragua," marking the formal initiation of this long-promised plan. With a Republican-leaning Congress and a Supreme Court reluctant to curtail Trump's vast claims of executive authority, the future legality of this strategy remains precarious (Kapur, 2025). By exploring the *Alien Enemies Act*'s historical applications and judicial treatment, along with the mounting resistance to Trump's unprecedented interpretation of this law, we analyze the legal and moral dangers of weaponizing the *Act* against migrant populations.

2.1 What is the *Alien Enemies Act*?

To understand the gravity of invoking the *Alien Enemies Act*, it is important to look at its origins and scope. Enacted as part of the broader Alien and Sedition Acts in 1798, the *Alien Enemies Act* was a national security measure that emerged during a period of hostilities with the French Republic (Wei, 2025). Although its companion measures were repealed or allowed to expire, the *Alien Enemies Act* was kept largely unaltered, preserving a monumental grant of executive authority. Presidents may authorize use of this *Act* during a declared war by Congress against an enemy state, or in response to an "invasion" or "predatory incursion" (Treisman, 2024). The statute applies to all "natives, citizens, denizens, or subjects" of a hostile nation aged 14 and older, irrespective of their demonstrated loyalty to the country (*Alien Enemies Act*, 1798). Frighteningly, unlike other national security measures, the *Alien Enemies Act* does not require individualized evidence of dangerousness or culpability; affiliation with an enemy state alone is sufficient to trigger action (Elsea, 2025). The sheer breadth of this law presents serious constitutional implications, as non-citizens subject to detention or removal have been denied due process. Under the *Act*, deportations can proceed without a hearing or judicial review, and there is little recourse for appealing the President's determination (Ebright, 2024b). Affected individuals may only file *habeas corpus* petitions to challenge their classification as enemy aliens or question

whether a state of war existed, rather than contest the actual threat they pose. In eliminating these fundamental legal protections, the *Alien Enemies Act* entrenches a dangerous and unchecked tool in the executive branch's wartime arsenal.

2.2 Historical Applications and Past Judicial Challenges of the Alien Enemies Act

The *Alien Enemies Act* was first invoked during the War of 1812 between the United States and British North America, a colonial territory that would later become Canada. It was subsequently applied in both World War I and World War II (Ebright, 2024a). During World War II, before Congress had formally declared war, President Franklin D. Roosevelt initially relied on the *Act* to detain nationals from Japan, Germany, and Italy in 1941. President Roosevelt later expanded the *Act's* reach in 1942 with Executive Order 9066, which mandated the internment of over 120,000 Japanese Americans in government-run camps (Elsea, 2025). These camps symbolize one of the darkest chapters in American history, widely recognized as a profound miscarriage of justice and a sobering reminder of how vulnerable human rights can become during times of crisis. In 1945, President Harry S. Truman continued the *Act's* use by issuing Proclamation 2655 and citing past congressional war declarations to deport thousands of individuals deemed to be security threats (Elsea, 2025). This history reveals how the *Act*, especially when paired with executive orders, has enabled presidents to view nationality as a proxy for threat and granted them alarming powers to suspend constitutional rights under the guise of national security.

Historically, courts have deferred to executive authority when reviewing the scope of the *Act*. In *Ludecke v Watkins* (1948), the Supreme Court noted the *Act's* historical acceptance as evidence of its constitutionality and confirmed the legal principle that foreign nationals affiliated with enemy states occupy a distinct status under U.S. wartime law. Furthermore, in *Ludecke*, the Supreme Court upheld the continued detention of a German national even *after* the cessation of hostilities, validating President Truman's unilateral discretion to determine the *Act's* duration. Similarly, in *Korematsu v. United States* (1944), the Court upheld President Roosevelt's mass internment order on the grounds that the internment camps were a military necessity, but later issued a conflicting ruling in *Ex Parte Endo* (1944) that "concededly loyal" U.S. citizens could not be indefinitely detained. Although *Trump v. Hawaii* (2018) formally disavowed the *Korematsu* decision as being "overruled in the court of history" and "gravely wrong the day it was decided," the judiciary's pattern of deferring to executive authority for the *Act* raises concerns about its potential misuse in the wrong hands. While the constitutional foundation for a nationality-based detention order by Trump is tenuous, the courts' inconsistent treatment of this issue casts doubts regarding their stance.

2.3 Trump's Invocation of the Act for Immigration Enforcement

Since the *Act* has only been used during declared wars, there is no existing precedent for invoking it in response to an "invasion" or "predatory incursion." Legal scholars have long interpreted these terms as referring to traditional military incursions and not transnational criminal organizations such as drug cartels (Santos, 2025). However, a senior White House official confirmed that Trump's January 20, 2025 Executive Order designating international cartels like Tren de Aragua ("TdA") as foreign terrorist organizations was "the first step" toward invoking the *Act*, eliminating any ambiguity about the administration's intentions (Alvarez & Treene, 2025). In the formal proclamation invoking the *Act*, the administration claimed that TdA controls illegal border crossings through violence and intimidation, effectively operating as quasi-governments (Strickler et al., 2025). Based on this, the proclamation argues that cartels qualify as an "invasion" or "predatory incursion" under the *Act* when they wield organized violence as warfare against the

nation (The White House, 2025). On March 15, 2025, the same day that Trump invoked the *Act*, Chief Judge James E. Boasberg of the District Court for Washington D.C. imposed a 14-day injunction to halt deportation attempts under the wartime law (MacFarlane, 2025). Venezuela also criticized the use of the *Act*, saying it “unjustly criminalizes Venezuelan migration” and “evokes the darkest episodes in the history of humanity” (Santos, 2025). Predictably, the administration disregarded Judge Boasberg’s injunction and continued their deportation of 261 individuals to foreign prisons in El Salvador, with 137 of those removals executed under the *Act* for alleged gang affiliations (MacFarlane, 2025). In response to the injunction, President Trump publicly called for Judge Boasberg’s impeachment, prompting a rare statement from Supreme Court Chief Justice John Roberts rebuking Trump’s misconduct (MacFarlane, 2025).

As tensions between the executive and judiciary branches escalated, the Supreme Court delivered its ruling in *Trump v. J.G.G.* (2025) on April 7, addressing Judge Boasberg’s lower court injunction blocking deportations to El Salvador under the *Act*. Although the Court found that the administration must provide notice and an opportunity for individuals to challenge their deportation—standard safeguards it had surprisingly failed to uphold—it also lifted the injunction on deportations. Controversially, the Court did this by resorting to a procedural decision and declining to rule on the underlying constitutionality of the *Act*’s novel application itself. The Court found that *habeas corpus* petitions must be filed in the district of confinement instead of under the *Administrative Procedure Act* in D.C., where the Venezuelan plaintiffs filed their initial lawsuit (Sherman & Sullivan, 2025). This decision is particularly striking given that lower courts, such as the one in *United States v. Abbott* (2024), had already rejected the idea that states may engage in war under Article I, Section 10, Clause 3 of the Constitution to combat cartel violence or unauthorized migration.

Following the Court’s narrow 5-4 decision in *Trump v. J.G.G.*, the American Civil Liberties Union (ACLU) filed a class action lawsuit on April 14, 2025, once again challenging the use of the *Act* on behalf of Venezuelan detainees (Cole & Polantz, 2025). Two days later, Judge Boasberg ruled that the administration’s failure to return the deportation flights reflected a “willful disregard” of his earlier order and established probable cause for criminal contempt (Cole & Polantz, 2025). This ruling by Judge Boasberg came just hours after District Judge Paula Xinis ordered Kilmar Abergo Garcia’s return to the United States, following an administrative error that led to his wrongful deportation. Judge Xinis is also weighing separate contempt proceedings against the administration, reflecting the growing divide between the branches (Asiedu, 2025). Meanwhile, the administration continues to face accusations of “stonewalling” to avoid answering the judges’ questions about deportation flights. This intensifying conflict made it clear that the Supreme Court urgently needed to intervene as the final arbiter of the Constitution, rather than sidestepping its duty by ruling on procedural technicalities. Finally, on April 19, 2025, in response to the ACLU’s lawsuit, the Court issued a brief and unsigned order directing the administration to stop any removal of detainees under the *Act* (Hurley, 2025). The Court’s order marked a decisive step toward reining in a presidency that had concerningly treated the rule of law as an obstacle and court decisions as optional.

2.4 Political and Social Implications

Beyond the legal battles, organizations like the Japanese American Citizens League and Tsuru for Solidarity have led the opposition since Trump first proposed invoking the *Act* in 2024. For many survivors and descendants of those incarcerated during World War II, this administration’s rhetoric signals a dangerous return to policies that once stripped them of their constitutional rights (Gueverra et al., 2025). These groups also highlight the broader societal consequences of Trump’s plans, which are equally troubling. Policies such as Missouri’s Senate Bill 72 to create an “Illegal Alien Certified Bounty Hunter Program Fund” and offer

\$1,000 rewards for identifying undocumented immigrants suggests an eerie shift toward expansive surveillance and ethically questionable enforcement tactics (Jimenez & Clarke, 2025). While federal and state-level initiatives converge, legitimate concerns arise about the deputization of private citizens as informal officers of immigration enforcement. Empowering ordinary people to monitor, report, or confront suspected migrants can risk turning governance into vigilantism and opens the door to the possible reality of citizens policing their own neighbourhoods.

Ultimately, the most formidable obstacle to Trump's plan is the growing unease, even among his staunchest supporters, over the administration's blatant defiance of the courts. These fears were exacerbated after Trump floated the idea of sending U.S. citizens to these same overseas prisons, a move that would constitute a flagrant violation of their basic constitutional protections (Watson, 2025). The notion that individuals—whether undocumented or naturalized citizens—could be wrongly deported to foreign prisons due to “administrative errors,” without any regard for due process, exposes the inherent flaws in Trump's plans. What began as a broadly supported call for immigration reform is now unravelling into a constitutional crisis, made worse by the administration's refusal to take accountability and its reliance on extremist views to drive a punitive agenda. Instead of expanding immigration courts to fairly adjudicate these cases, the Trump administration has resorted to the harshest tactics to appease the most fervent members of its base. The American public may have demanded change, but likely not at the expense of the Constitution and the very foundations of its democracy.

Irrespective of how the courts address Trump's invocation of the *Act*, the consequences will reverberate far beyond U.S. borders. The developments are expected to disrupt cross-border mobility and drive a surge in both authorized and unauthorized immigration into Canada. With a federal election looming and Canadians ranking immigration as a top concern, the ripple effects of America's policies will shape our own reaction. A growing number of Canadians already express dissatisfaction with current immigration levels, and Canada's system will only become more burdened in the coming months as Americans seek refuge from an increasingly aggressive immigration crackdown. In light of this, Canada must respond to the anticipated influx of immigration from the southern border with clear and measured policies that directly address its role in this shifting landscape. Consequently, for these policies to succeed, they must strike a careful balance between managing migration and fostering integration.

3. Deferred Action for Childhood Arrivals: A Timeline of Hope and Legal Limbo

In this context of heightened enforcement and judicial uncertainty, deportations are touching not only recently arrived asylum seekers and migrants, but also people who have been settled in the United States for decades, including a significant number of people who arrived as children. Many have acquired provisional legal status under the Deferred Action for Childhood Arrivals (DACA) program introduced by President Barack Obama in 2012. On June 15, 2012, President Obama announced DACA, offering temporary relief from deportation and work authorization to undocumented immigrants brought to the U.S. as children (Robertson, 2018). For many, this policy represented newfound hope—an opportunity to study, work, and contribute to society without the constant fear of deportation (Benenson, 2024). “This is not amnesty,” Obama stated, clarifying that while DACA was not a permanent solution, it was a crucial step toward stability for Dreamers, a term commonly used to refer to DACA recipients (U.S. Citizenship and Immigration Services [USCIS], 2025). The program allowed recipients to pursue higher education, secure jobs, and build lives in the only country many of them had ever known. Without DACA, hundreds of thousands would lose their work permits, face uncertainty in their education, and be at risk of deportation to countries they may barely remember (Chishti & Gelatt, 2022). The mental,

financial, and emotional toll of this uncertainty has been profound, not only on recipients but also on their families, many of whom include U.S. citizen children and siblings (Graauw & Gleeso, 2019).

Yet, from its inception, DACA was built on fragile ground, relying solely on executive action rather than legislative approval. It filled the gap left by Congress' repeated failure to pass the DREAM Act, a bill first introduced in 2001 to provide a path to permanent residency and citizenship for undocumented immigrants brought to the U.S. as children (Robertson, 2018). Despite bipartisan support, the DREAM Act has failed to pass multiple times, leaving DACA as the only safeguard available to Dreamers (Chishti & Gelatt, 2022). More than a decade later, the program remains in legal limbo, caught between political battles, court rulings, and ongoing uncertainty about its future. Without legislative action, DACA recipients will continue to live under the looming threat of losing their protections, their jobs, and their place in the country they call home.

In this section of the paper, we examine DACA's legal foundation, its evolution from the Obama administration's executive action to the Trump administration's attempted termination and the Biden administration's ongoing legal battles. We assess its current status, including court rulings that have blocked new applications while allowing renewals, and we argue for urgent legislative reform. Without a permanent solution, Dreamers remain in limbo, facing uncertainty in education, employment, and their home.

3.1 The Fragile Legal Foundations of DACA

The DACA program is built on prosecutorial discretion, allowing the Department of Homeland Security (DHS) to defer deportation for eligible undocumented immigrants brought to the U.S. as children (USCIS, 2025). While it grants temporary protection and work authorization, it does not provide legal status or a pathway to citizenship, leaving recipients in a state of legal limbo. This distinction makes DACA both a lifeline and a fragile solution. Recipients can legally work, obtain a Social Security Number, and, in some states, apply for driver's licenses. However, they cannot apply for permanent residency, sponsor family members, or access federal financial aid for higher education (Robertson, 2018). They are also ineligible for most federal benefits such as Medicaid, food assistance, and housing support (Benenson, 2024). Without a direct path to citizenship, DACA recipients remain vulnerable to policy changes and legal battles, as seen in recent court rulings that have blocked new applications (Chishti & Gelatt, 2022).

One of DACA's greatest vulnerabilities is its reliance on executive authority rather than Congressional approval. Established in 2012 through a DHS memorandum, DACA was enacted without the backing of legislation, making it vulnerable to political shifts and legal challenges (USCIS, 2025). This fragility became clear in 2017, when President Donald Trump attempted to terminate the program, arguing that it was an unconstitutional overreach (Panetta, 2025). However, in 2020, the Supreme Court blocked Trump's efforts, ruling not on the legality of DACA itself, but on procedural grounds, finding that the administration had failed to properly justify its termination under the Administrative Procedure Act (APA) (Robertson, 2018). This ruling kept DACA in place, but it did not affirm its long-term legality, leaving it open to future challenges (Chishti & Gelatt, 2022).

In 2021, legal uncertainty deepened when a federal court in Texas (*Texas v. United States*) ruled that DACA was unlawfully implemented, stating that it should have gone through a formal regulatory process rather than being created through executive action alone (Akerman LLP, 2025). Despite this ruling, the court allowed existing recipients to continue renewing their status, while blocking new applications (USCIS, 2025). This contradiction—where DACA has been ruled unlawful but still exists—is due to court's choosing to preserve protections for current recipients while legal battles continue. The Biden administration has attempted to fortify DACA

through regulatory rulemaking, but ongoing legal challenges leave the program in a state of perpetual uncertainty (USCIS, 2025).

A permanent legislative solution, such as the DREAM Act, would provide stability and prevent DACA recipients from being caught in the constant cycle of political and legal battles. However, Congress has failed to pass the bill for more than two decades, keeping Dreamers in uncertainty about their future. Without a path to citizenship, thousands remain vulnerable to deportation despite their contributions to the economy, education, and American society (United We Dream, 2025).

3.2 DACA's Tumultuous Journey: Legal Battles and Political Shifts

The Obama Administration (2012-2016): A Bold but Fragile Beginning

2012: The Creation of DACA – A Temporary Lifeline

On June 15, 2012, President Barack Obama announced the DACA program through a Department of Homeland Security (DHS) memorandum, bypassing Congress after repeated failures to pass the DREAM Act. The program offered temporary deportation relief and work authorization to undocumented immigrants provided they met key eligibility requirements outlined by U.S. Citizenship and Immigration Services (USCIS, 2025; see Appendix A). While DACA provided a much-needed reprieve, it was not a permanent fix. It did not offer a path to citizenship and was subject to renewal every two years, highlighting its vulnerability as an executive action rather than a law.

2014: Expansion Blocked – DACA's First Legal Challenge

In 2014, President Obama attempted to expand DACA and introduce Deferred Action for Parents of Americans (DAPA), offering deportation relief to undocumented parents of U.S. citizens and permanent residents. The expansion aimed to remove the 31-year age cap, shift the continuous residence requirement from 2007 to 2010, and extend work permits from two to three years, allowing more Dreamers to qualify. The revised timeline recognized that many undocumented youth arriving after 2007 had similarly integrated into American society (MALDEF, 2019). However, Texas and 25 other Republican-led states sued the Obama administration and DHS, arguing that the executive action exceeded presidential authority and imposed financial burdens on states. In *Texas v. United States*, a federal court issued an injunction blocking both the DACA expansion and DAPA. The Fifth Circuit Court of Appeals upheld the ruling, and in 2016, the Supreme Court deadlocked 4-4, effectively keeping the lower court's decision in place. This ruling underscored the legal fragility of DACA, demonstrating how an executive action, without Congressional approval, could be easily challenged and overturned (National Immigration Law Center [NILC], 2025).

The Trump Administration (2017-2020): DACA Under Siege

2017: Trump Declares DACA Illegal and Moves to Terminate

On September 5, 2017, President Trump announced plans to terminate DACA, arguing that it was an unconstitutional overreach of executive power (USCIS, 2025). The decision immediately halted new DACA applications, preventing eligible Dreamers from accessing the program for the first time. However, existing recipients were allowed to continue renewing their status, albeit under

growing uncertainty (Higher Ed Immigration Portal, 2024). The move sparked national protests and legal battles, with immigrant rights groups, Democratic-led states, and universities challenging the administration's decision in court (Kopan, 2017). Trump gave Congress six months to pass legislation to permanently protect Dreamers, but despite bipartisan negotiations, no deal was reached. As a result, DACA recipients were left in legal limbo, with their futures hinging on court rulings that would ultimately determine the fate of the program.

2018-2019: Courts Step In – Temporary Relief for Dreamers

Multiple federal courts issued nationwide injunctions blocking the Trump administration from immediately ending DACA (Shear & Davis, 2017). Judges ruled that the administration had failed to provide a valid justification for terminating the program, citing procedural violations under the *Administrative Procedure Act* (APA) (AILA, 2025). The APA requires that executive actions be supported by reasoned explanations, follow proper rulemaking procedures, and consider the impact on those affected. Courts found that Trump's justification for ending DACA was arbitrary and capricious, as it failed to account for the reliance interests of recipients and did not explore alternative approaches before attempting to rescind the program entirely.

2020: The Supreme Court's Surprise Decision

In June 2020, the Supreme Court ruled 5-4 against Trump's termination of DACA, stating that the administration's attempt to end the program was indeed arbitrary and capricious under the APA (Supreme Court of the United States, 2020). However, the decision did not affirm DACA's legality. Rather, it found that the Trump administration had failed to follow proper legal procedures in its attempt to rescind the program. As a result, DACA remained intact but vulnerable to future challenges. The ruling did not prevent a future administration from attempting to end the program through proper rulemaking (Chishti & Gelatt, 2022).

The Biden Administration (2021–2024): Legal Battles and an Uncertain Future

2021: Texas v. United States – DACA Declared Unlawful

Shortly after taking office, President Biden signed an executive order reaffirming support for DACA and directed the Department of Homeland Security (DHS) to strengthen the program (Shear & Davis, 2017). To provide a stronger legal foundation, the administration introduced a rule to codify DACA into federal regulations, meaning it would go through a formal rulemaking process under the APA rather than relying solely on executive action (Harrington, 2020). Unlike executive orders, which can be reversed by future presidents, federal regulations require a public notice-and-comment period, legal review, and agency approval, making them more resistant to immediate repeal (Harrington, 2020). While codification does not provide permanent legal status (only Congress can do that) it makes dismantling DACA more difficult, forcing opponents to challenge it through the courts rather than using swift executive action. This distinction is critical as Trump has indicated plans for sweeping immigration orders that could target programs like DACA.

However, in July 2021, U.S. District Judge Andrew Hanen of Texas ruled in *Texas v. United States* that DACA was unlawful, citing its improper enactment without following the APA (Federal Register, 2021). The ruling blocked new applications but allowed renewals to continue, leaving recipients in legal uncertainty (USCIS, 2025). Although issued by a Texas federal court, the ruling applied nationwide because federal district courts can issue nationwide injunctions in cases involving federal policies. Texas and other Republican-led states argued that DACA imposed

financial burdens on them, prompting the court's intervention (U.S. Court of Appeals for the Fifth Circuit, 2022).

2022–Present: Courts Keep DACA in Legal Limbo

In October 2022, the Fifth Circuit Court of Appeals upheld Judge Hanen's ruling, reinforcing that DACA was unlawful but allowing existing recipients to continue renewing their protections temporarily (U.S. Court of Appeals for the Fifth Circuit, 2022). In an effort to strengthen the program, the Biden administration issued a final rule in August 2022, which attempted to formally codify DACA into federal regulations rather than relying on the original 2012 DHS memorandum (USCIS, 2025). By issuing the Final Rule, the administration hoped to give DACA a firmer legal standing, making it harder for courts to strike down the program based on procedural concerns. However, the Fifth Circuit Court of Appeals ruled that even the Final Rule did not resolve the underlying legal issues, keeping new applications blocked while allowing renewals to continue.

3.3 DACA in 2025: A Program on Shaky Ground

As of 2025, the DACA program remains in legal and political uncertainty. While existing recipients (approximately 580,000 as of late 2022) can renew their protections and work authorizations every two years, new applications have been indefinitely halted (USCIS, 2025). This situation has left thousands of eligible Dreamers in limbo, unable to obtain deportation relief, work permits, or access to education and employment opportunities (Kaiser Family Foundation, 2025). The widening gap between those who already benefit from DACA and those who remain unprotected highlights the growing need for a permanent legislative solution. While long-time recipients can continue renewing their status, newly eligible Dreamers who meet all program criteria are unable to apply, leaving them without work authorization, at risk of deportation, and facing additional barriers to higher education and financial aid (Presidents' Alliance on Higher Education and Immigration, 2025). According to a report from the Migration Policy Institute (Zong et al., 2017), DACA recipients have contributed significantly to the U.S. economy and workforce, yet their future remains uncertain due to legal and political challenges.

DACA's uncertain future has placed its recipients in a state of constant anxiety, unsure of what comes next. The program's instability has created significant obstacles in multiple aspects of their lives. In education, Dreamers face barriers to federal financial aid, making it difficult to afford college, while varying state policies on tuition further complicate access to higher education. In the workplace, DACA provides work authorization, but the need for renewal every two years leaves recipients in a cycle of uncertainty, with the looming risk of job loss if their status is revoked (Wong et al., 2024). Beyond these tangible challenges, the emotional toll is profound. The ongoing legal battles and the ever-present threat of losing protections have contributed to heightened stress, anxiety, and difficulty planning for the future (NILC, 2025). For many Dreamers, DACA is the only safeguard keeping them from deportation, yet its precarious nature makes it clear that a permanent solution is urgently needed (Robertson, 2018).

3.4 Trump's Stance on DACA and Predictions for His Second Term

With his return to office in 2025, President Trump reignited efforts to dismantle the DACA program. His administration has long argued that DACA is unconstitutional, claiming that it oversteps executive authority by granting deportation relief and work permits without Congressional approval (Akerman LLP, 2025). This position has been reinforced by legal challenges, which have steadily eroded the program's stability.

The Fifth Circuit Court of Appeals ruling reinforces the argument that DACA was unlawfully implemented, providing a legal precedent that other courts, including the Supreme Court, may use to strike down the program in its entirety. While the decision currently applies only to Texas, it signals to other states that they may succeed in similar lawsuits, potentially leading to nationwide consequences. Additionally, by upholding the lower court's ruling, the Fifth Circuit strengthens the likelihood that the Supreme Court will eventually take up the case. If the Court, now with a conservative majority, rules against DACA, the program could be invalidated nationwide, stripping protections from all recipients and preventing any future renewals (Panetta, 2025).

Despite his hardline immigration stance, Trump has made contradictory statements regarding Dreamers. In an NBC interview before his 2025 inauguration, he acknowledged that DACA recipients were brought to the U.S. as children and “don’t even speak the language of their country.” He hinted at a possible legislative solution, suggesting that Congress might work on alternative protections for Dreamers. However, he did not provide details or a concrete plan (Panetta, 2025). However, Trump’s first-term actions cast doubt on these reassurances. In 2017, his administration attempted to terminate DACA, only to be blocked by the Supreme Court in 2020. This time, Trump has adopted a different strategy, relying on ongoing litigation to gradually dismantle the program. With the Supreme Court now holding a stronger conservative majority, a ruling against DACA could eliminate the program without requiring Trump to issue an executive order (United We Dream, 2025).

3.5 The Future of DACA Under Trump

With the Fifth Circuit ruling reinforcing DACA’s legal vulnerability and Republican-led legal challenges escalating, the Supreme Court is likely to determine the program’s fate. If the Court rules against DACA, DHS could initiate mass deportation proceedings against recipients (Panetta, 2025). However, several factors may delay or complicate enforcement. Public opinion remains a significant obstacle to large-scale deportations, as polls consistently show strong support for Dreamers (United We Dream, 2025). While this makes immediate action politically risky, congressional gridlock has repeatedly prevented a bipartisan solution, making a legislative fix unlikely. Although the Supreme Court will decide whether DACA can continue under existing law, only Congress has the power to create a permanent pathway to citizenship for Dreamers. However, past efforts to pass the DREAM Act and similar measures have failed due to broader disputes over immigration policy, including border security and enforcement priorities (Akerman LLP, 2025). Without a legislative breakthrough, DACA recipients remain trapped in legal uncertainty, relying on temporary executive policies that can shift with each administration.

State and local resistance could also play a critical role in shaping the outcome. Democratic-led states such as California and New York have implemented sanctuary policies designed to limit federal immigration enforcement, and state attorneys general are likely to challenge any escalation of deportations in court (United We Dream, 2025). Immigration advocacy groups such as United We Dream are preparing legal responses to potential DHS actions. Beyond legal battles, the Trump administration may seek to bypass traditional enforcement procedures by invoking emergency executive powers. The *Alien Enemies Act* or a National Emergency Declaration could allow for expedited deportations without standard court hearings, raising serious due process concerns (Panetta, 2025). While Trump has not yet issued an executive order directly targeting DACA, the administration’s legal strategy indicates an intent to dismantle the program through the courts rather than immediate executive action (Akerman LLP, 2025). The coming months will be critical in determining whether DACA recipients retain their protections or become subject to the broader immigration crackdown during Trump’s second term.

3.6 The Case for Legislative Reform

For over two decades, the Development, Relief, and Education for Alien Minors (DREAM) Act has been introduced in the U.S. Congress but has yet to be enacted, leaving DACA recipients in a state of uncertainty (AP News, 2025). Legislative reform is essential to provide the stability and security these individuals deserve. Without Congressional action, hundreds of thousands of young immigrants, many of whom have spent most of their lives in the U.S., risk losing work authorization and facing potential deportation (AP News, 2025). Passing the DREAM Act has been challenging, particularly under the current administration and the divided political landscape in Congress. Historically, the bill has enjoyed bipartisan support in principle, with many lawmakers recognizing the economic and moral imperative of providing a pathway to citizenship for Dreamers. However, efforts to pass the legislation have consistently stalled due to broader debates over border security and immigration enforcement (Zhou, 2024).

Under the current administration, gaining sufficient Republican support for the bill would likely require significant concessions on border security measures, such as increased funding for immigration enforcement or stricter asylum policies (Robles, 2024). Another potential obstacle is the shifting priorities of Congress. While immigration reform remains a pressing issue, competing legislative concerns, such as economic policy, healthcare, and foreign affairs, could push the DREAM Act further down the agenda. Given these challenges, Dreamers may continue to rely on executive actions and legal battles to maintain their protections unless a significant political shift occurs (Robles, 2024).

Beyond the moral obligation to protect Dreamers, there is a strong economic imperative to pass legislative reform. DACA recipients are deeply embedded in American society, contributing to the workforce, economy, and tax system. They work in essential industries such as healthcare, education, and technology, filling labour shortages and boosting GDP. Studies indicate that providing Dreamers with a pathway to permanent residency and citizenship would increase economic output and strengthen communities (Kelly, 2025). More importantly, it would reflect the national values of inclusion and opportunity, ensuring that those who have built their lives in the U.S. can continue to thrive without fear of deportation.

Concluding Remarks: Deportability, Due Process, and the Cross-Border Implications

Recent legal and judicial developments in the United States with regard to “deportable” migrants raise important concerns. The legal limbo surrounding DACA recipients, who have lived most of their lives in the U.S., and the aggressive enforcement of indiscriminate controls in public spaces to identify migrants without citizenship through the *Alien Enemies Act* paint a gloomy picture. The U.S. government is rapidly expanding an environment of ‘deportability’ where status is neither stable nor secure, but contingent on shifting political and legal landscapes. This treatment of long-term residents and newly arrived asylum seekers discussed in this paper points to a larger system that prioritizes seemingly arbitrary decisions regarding exclusion and protection, often disregarding fundamental principles of due process and human rights.

While DACA has provided temporary relief for Dreamers, its legal fragility leaves recipients in constant uncertainty. With ongoing court battles and the risk of termination, the program’s future is at stake. Without congressional action, hundreds of thousands face the loss of work authorization and deportation to countries they barely remember. The only lasting solution would be legislative reform, in order to ensure Dreamers have a permanent pathway to legal status and stability in the country they call home. At the same time, the second Trump administration’s radical interpretation of the *Alien Enemies Act* will serve as a defining test of the judiciary’s commitment to upholding due process and constitutional safeguards. While the Supreme Court has yet to

address whether cartel and gang violence constitutes an “invasion” by “quasi-government” groups warranting unusual executive action, the administration’s own admissions and actions leave little doubt about their intent to continue to stretch the statute beyond its historical bounds. The unchecked powers conferred by the *Act* and the prospect of circumventing due process are not only plausible but severely alarming. Despite efforts to block this encroachment on constitutional protections, the real challenge lies in whether the Supreme Court will reject the unfounded interpretation of the *Act* and reaffirm the Constitution as the ultimate shield against Trump’s executive overreach.

As the U.S. rapidly expands conditions for deportability, Canada will need to reassess its stance toward such policies and practices in preparation for a potential influx of migrants. In an era where migration enforcement is increasingly weaponized, ensuring equitable and humane immigration policies is both a legal imperative and a moral necessity.

Appendix A

To qualify for Deferred Action for Childhood Arrivals (DACA), applicants must meet the following eligibility requirements, as outlined by U.S. Citizenship and Immigration Services (USCIS, 2025):

1. Age and Arrival in the U.S.:
 - Must have been under 31 years old as of June 15, 2012.
 - Must have entered the United States before turning 16.
2. Continuous Residence:
 - Must have continuously resided in the U.S. since June 15, 2007.
 - Must have been physically present in the U.S. on June 15, 2012, and at the time of applying for DACA.
3. Educational and Military Requirements:
 - Must be currently in school, have graduated high school, earned a GED, or have been honourably discharged from the U.S. Armed Forces or Coast Guard.
4. Legal Status and Documentation:
 - Must have entered the U.S. without lawful status before June 15, 2012, or had lawful status that expired before that date.
5. Criminal Background Restrictions:
 - Must not have been convicted of a felony, a significant misdemeanour, or multiple minor offenses.
 - Must not pose a threat to national security or public safety.

While DACA grants temporary protection from deportation and work authorization, it does not provide legal status or a pathway to citizenship. These criteria determine whether an applicant qualifies for initial or renewal applications, but no new applications have been accepted since 2017 due to ongoing legal challenges.

For the official and most up-to-date eligibility information, refer to [USCIS DACA Guidelines](#).

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