



TEXAS A&M UNIVERSITY

School of Law

“TAMU Law Answers” Webinar Series:
LEGAL ISSUES IN THE AGE OF THE CORONAVIRUS

“IMMIGRATION PRACTICE AND POLICY DURING THE PANDEMIC”
Webinar Series

“The Supreme Court's DACA Decision and its Impact”

Presented July 9, 2020

Panelists:

- Fatma Marouf, Professor and Director of the Immigrant Rights Clinic, Texas A&M University School of Law
- Angela Morrison, Associate Professor, Texas A&M University School of Law
- Huyen Pham, Professor, Texas A&M University School of Law
- Nancy Plankey-Videla, Associate Professor, Texas A&M University Department of Sociology
- Luz Herrera (moderator), Professor and Associate Dean of Experiential Education, Texas A&M University School of Law

While the panelists are all attorneys, they will be discussing the law generally, and nothing in the webinar should be considered as legal advice. Attendees should consult their own legal advisor to address their own unique circumstances.

TRANSCRIPT:

- Howdy. Welcome to the Texas A&M School of Law's webinar, the Supreme Court's DACA Decision and its Impact. This webinar is part of the [Immigration Practice and Policy during the Pandemic series](#) and also part of the webinar series called [Legal Issues in the Age of Coronavirus](#). There are a number of webinars that our faculty, in collaboration with other colleagues in the legal profession and other fields, have put together. And you can find those webinars on [TAMULawAnswers.info](#).

I want to go ahead and get started with today's webinar to talk about DACA and its-- the DACA decision and its impact by introducing some of our panelists. But before I do, there are a couple

of things that I want to mention. Most of the panelists are attorneys, and they will be discussing the law generally. But nothing in the webinar should be considered to be legal advice. Attendees should consult their own legal advisor to address their own unique circumstances.

The other thing that I wanted to mention is that we will be utilizing the question and answer function in Zoom. We will not be using the chat. This function allows attendees to submit questions during the webinar. So please submit your questions via the question and answer button at any time, and we will open up discussion and answer questions after the initial presentation.

So I wanted to go ahead and introduce my colleagues who I'm very fortunate to work with. First and foremost, I want to introduce Professor [Fatma Marouf](#), because she's been directing the webinar series on immigration. So thank you, Fatma. She's a professor here at Texas A&M and directs our Immigrant Rights Clinic.

We also have Professor [Huyen Pham](#), who is also a professor here at Texas A&M University School of Law. And among the things that she teaches is criminal law, and a lot of her writing has been on crimmigration. And so we're very fortunate to have her contribute to this.

Another one of my colleagues is Professor [Angela Morrison](#) who is one of our fantastic instructors, whose work focuses on employment law and the intersection of immigration, but is all around an amazing rock star. So we're excited to have her.

And last but definitely not least is our colleague in the Department of Sociology, [Nancy Videla-Plankey](#), who has been a wonderful collaborator for those of us on the webinar, particularly because she's often our link to College Station, which is part of the university that's three hours away from the law school.

So thank you so much to all of you for being involved. We're not going to spend a whole lot of time on resumes, because I think the content and the question and answer period are more important. So I'm going to go ahead and turn it over, I think, to Huyen Pham who's going to lead us by talking about-- giving us an overview of the Supreme Court decision.

- So good afternoon, and thank you, Dean Herrera. My task in this webinar is to talk about the substance of the Supreme Court's decision. And I'd like to start with a very brief explanation of DACA, and I'd like to take it two initials at a time.

So DACA, D-A stands for deferred action. So this means for beneficiaries of the program that they are granted protection from deportation for two years. It is not a grant of any kind of permanent legal status, and it is not a pathway to citizenship. It's basically an agreement with ICE, Immigration and Customs Enforcement, to defer action on the beneficiary's case for two years. And for those who qualify, DACA also grants work authorization.

C-A, childhood arrivals. DACA is available to young people who arrived in the United States as children before a certain date and who continue to be young, because you have to have been under age 31 as of June 2007. You have to have either graduated from high school or have been

honorably discharged from the armed services. And you have to have had no criminal record-- or no substantial criminal record.

And as we all know, the Trump administration attempted to terminate this program in September 2017, about nine months after he took office. This attempt to terminate the program inspired different legal challenges. And we had, in the aftermath, three different district court decisions issuing injunctions. And these injunctions against the administration had the effect of allowing people who already had DACA to renew their application. All these legal challenges to the decision to try to terminate were consolidated and formed the basis of the Supreme Court's decision that was issued on June 18.

The case is called *the Department of Homeland Security v. the Regents of the University of California*. And it was a 5-4 decision in an opinion that was written by Chief Justice Roberts, that was joined by Justices Breyer, Ginsburg, Kagan and Sotomayor, who joined most of the opinion, except for Part 4. I'll talk about that in just a bit. In its opinion, the majority basically said that the Trump administration has the legal authority to terminate DACA. But in this particular case, its termination was unlawful, because the administration did not follow the correct procedures as required by the Administrative Procedure Act.

So what reason did the administration give when it tried to terminate DACA back in September 2017? You may recall that Acting Secretary of Homeland Security Elaine Duke-- she was Homeland Security about four secretaries back. She basically offered this explanation. She said DACA is similar to another deferred action program, that the Fifth Circuit held was unlawful.

And the attorney general at the time, Jeff Sessions, said that DACA is unlawful. And by law, Department of Homeland Security is bound to follow legal decisions made by the attorney general. So she said, because DACA is illegal, we're going to terminate the program.

And interestingly enough, when the Supreme Court reviewed her proffered reason, the Court did not really decide whether DACA is legal or not, whether the president would have this kind of authority to create this kind of program. Rather, the Court said, even assuming that it's illegal, the secretary still had policy decisions to make when she decided to 1, terminate the program, and 2, decide how she was going to wind it down.

And when she decided to terminate the program, she decided that DACA beneficiaries would lose both the legal protection from deportation and work authorization. So that was her decision. Everybody would lose both protection from deportation and work authorization.

But the Supreme Court majority asked, why not consider the two separately? The Fifth Circuit opinion that she cited only said that the work authorization and other benefits was illegal, not the protection from deportation. So why did the secretary decide to terminate both? Did she consider keeping the deportation protection separately? Why or why not? And we simply don't know, because she did not consider these alternatives, and she did not offer any explanation.

And the Supreme Court said, drawing upon principles of administrative law, that her failure to explain her reasoning process, including her failure to consider her other options besides the

option she did take, made her decision arbitrary and capricious, and therefore, illegal under the Administrative Procedures Act. But the Court wasn't finished.

They said there was another defect in her decision-making process. They said she failed to address the reliance of interests. Of whom? Of the DACA beneficiaries themselves, their families, their employers, and their larger communities. And the Court said, DACA beneficiaries relying on this program have invested in college educations. They've bought homes. They've started families.

And those families, in turn, depend on them, in many cases, for financial support. Their employers have spent money to train them and depend on them to work. And their communities benefit from their labor, benefit from the taxes they pay, benefit from the money they spend in the communities.

What about all these reliance interests? What did the secretary think about these reliance interests? And the answer is that we don't know. She did not address these reliance interests in her memo that she issued.

And the Court said, well, maybe if she had, she might have allowed for a longer wind down period, or maybe she would have allowed some DACA beneficiaries, maybe those in college programs, to stay longer than others, all sorts of alternatives that she could have considered. The Court said that her failure to address these reliance interests provided additional grounds for finding that her decision was arbitrary and capricious, and therefore, illegal.

In its decision, the Court draws upon a long line of Supreme Court cases that basically recognize an agency's authority to make policy decisions, like the decision to terminate DACA, but requires them to give a reasoned explanation for these decisions. And these explanations in turn require them to consider all reasonable alternatives. And when an agency fails to do so, that failure invalidates their decision.

So you may be thinking to yourself, why didn't the Trump administration just go back and offer a different explanation, a better explanation, and take into account all these alternatives and all these reliance interests? Well, actually, the administration tried to do that. A new secretary of Homeland Security, Kirstjen Nielsen, issued a memo in June 2018. And she offered new reasons why Homeland Security was going to terminate DACA.

She framed her memo as an elaboration of the memo written by Elaine Duke, not as a new government action. And that technical difference is very important, because the Supreme Court, drawing upon another administrative law doctrine referred to as the *Chenery* principle, didn't even consider these other reasons that were offered by Secretary Nielsen. The *Chenery* principle says that when a court reviews the legality of an agency action, it will only consider the reasons that the agency offered at the time it took its decision-- made its action, not nine months later, not after the agencies conferred with lawyers, not after three district courts have already pointed out the flaws in their original reasons.

And Chenery principle may sound like a technicality, which is what the dissent argued, but basically, it's designed to hold agencies accountable and to build public trust. The message to agencies is, say what you mean and explain what you mean when you act, again, not after the fact, not after you've conferred with your lawyers, and not after you've been sued. So that's all administrative law analysis.

There is one further part of the Court's analysis that deals with constitutional challenges, and this was in Section 4 the opinion. Chief Justice Roberts and three justices rejected the equal protection challenge raised by the plaintiffs. The plaintiffs argued that there was evidence that the Trump administration's decision to terminate DACA was motivated by racial animus. And if so, that would have violated the Equal Protection Clause.

Justice Sotomayor did not join in this section of the opinion. She would have sent the case back to the lower courts to allow the plaintiffs to develop their equal protection claims. Remember, this was all happening at a preliminary stage in the lawsuits. There had not been a full trial. She would have allowed them to go back and develop their claims in a full trial.

And what evidence did she find persuasive on this count? She said the fact that the president has made many, many disparaging comments about immigrants, about Latinos, and Mexicans specifically, and the fact that the agency, Department of Homeland Security, decided to terminate DACA somewhat abruptly-- just three months before they decided to terminate, Homeland Security was publicly supporting DACA. And she said the abrupt turnaround in their decision-making at least suggested the possibility that their decision was based on racial animus versus sound policy reasons. With that, I will pass the baton on to my colleagues to explain the importance of the Court's decision. Thank you.

- Thank you, Professor Huyen. So I want to talk a little bit about the social implications of this decision for students in university. But to understand the social implications, first we need to understand the population in question and the importance of DACA on recipient [INAUDIBLE].

So as of March 2020, there were over 640,000 DACA recipients and 1.3 million DACA-eligible individuals in the US. Over 106,000 have DACA in Texas, and another 86,000 are eligible for it in Texas. So who are these DACA recipients?

On average, DACA recipients were only six years old when they arrived in the US. Over 70% have a US citizen spouse, child, or sibling. 66% are between the ages of 21 and 30, prime working age. 81% of DACA recipients have lived in the US for more than 15 years. This is a very settled population who have deep roots in their communities. And 83% is in the labor force. Of these, 95% are employed.

And they make important contributions to the US. According to the Institute on Taxation and Economic Policy, DACA recipients paid nearly \$1.8 billion in state and local taxes in 2017. And if we include those who are DACA-eligible, not just those who hold DACA, that would reach \$2.6 billion annually.

So what about the impacts of DACA? Well, according to the most systematic study of DACA holders, that of the National Undocumented Research Project, or NURP, by Professor Alberto Gonzales and colleagues at Harvard-- and this is a 2013 national survey of nearly 2,700 DACA holders, followed by three waves of in-depth interviews with 408 recipients-- they find that the impacts are quite clear and quite positive. It has been the most successful piece of policy related to immigration in the last decade.

So what's important to understand is that with the promise of opportunity, young people have hope and have motivation, can make plans, even if their plans are short-term, given the two year renewal period. So we have improved high school graduation rates. We have greater participation in two year and four year colleges. And not only do they participate more in college, but they can follow a career that is their passion, their intended career, and not the one which they may be able to work in if they don't have documents.

Temporary social security cards are essential in obtaining internships and job training, which are so necessary for that next step of a career or a postgraduate career, postgraduate study. DACA beneficiaries who completed certificates or licensing programs experience increased earnings. The study found hourly increases from \$5 to more than \$14 an hour. And 76% doubled their previous yearly salary. And so if we think about all of the positive [INAUDIBLE] is quite significant.

But it also means that they can contribute more to their families with their driver's license and the temporary social security. They can help purchase cars, homes, sign leases, establish credit, access health care. They could travel abroad with Advance Parole.

But the most important benefit many find is physical health and mental health. Renewed hope leads to motivation to succeed and a willingness to invest in one's future through education and job training. Being able to obtain a driver's license means being able to go to school and work in a chosen field, and therefore, have a greater sense of belonging and of having a future, even though family members often remain at risk of deportation.

And importantly, a personal sense of self-efficacy develops that leads to a sense of agency, and again, this increased sense of belonging, that they belong in the U.S., which is a feeling that many already had, even though they kept being reminded that they didn't totally belong, because they didn't have papers.

Having DACA leads to less anxiety. 70% of study participants felt less stress. And 2/3 reported less fear of law enforcement and immigration offices, even being willing to call the police in need, something that the majority were not willing to do before they had DACA.

Other DACA holders reported greatly reduced fear of being deported. That doesn't extend to their family. In the 2013 survey of nearly 2,700 recipients, 70% reported personally knowing someone who had been detained or deported. And even more telling, of these, 65% worried all or most of the time that someone they knew would be deported.

So what are the lessons that we can draw from this research and other research on DACA? First, because it's only a two year deferment from deportation and work authorization, it actually still stunts making long-term plans and following through on work and study trajectories. The renewal cost of \$495 often is not sufficient, and people fall out of status. This, together with the delays of renewals at USCIS, can mean that even if you renew on time, your DACA papers are not renewed on time, and you may lose your job.

DACA is a federal program, but states, counties, and municipalities can add rights or subtract benefits. So DACA holders, for example, cannot obtain federal aid for college or Obamacare. But states can allow for state financial aid, such as Texas does through SB 1403.

What we find from this research is that mentors and support in high school and colleges are essential to success. If it were not for these mentors, most of the students would not follow through on this renewed sense of hope. So connecting with community organizations, connecting with counselors at school is crucial for applying and succeeding. So the cost to ending DACA are especially-- not only in terms of employment, but especially important when we think about mental health and physical health in general.

Comparing the 2015 interviews to those in 2019, Gonzales and colleagues found a deteriorated sense of self-efficacy and stability. Research participants expressed declines in self-reported mental health and emotional well-being. With the increased uncertainty, anxiety, and stress, DACA holders are less likely they found to purchase homes, purchase cars, or invest in education.

Another important study that tells us about the physical health effects is a 2019 California study that compared self-reported health of undocumented and DACA recipients from 2007 and 2017. This allowed them to have a base to compare undocumented status to DACA status. And looking at DACA recipients during the first years, from 2012 to 2015, to then the summer of 2015 when campaign discussions about ending DACA began, to 2017, there is a clear change.

Hadler and colleagues found DACA holders exhibited improved health benefits in 2012 to 2015, but those benefits dissipated with the increased anxiety. That's important to think about. Other studies show that DACA effects are intergenerational. Children of DACA holders suffer greater degrees of anxiety and less anxiety when the parents have DACA. And this was a study in Oregon.

So what does this mean for the university? Well, we all have a responsibility of securing a safe, inclusive, and welcoming learning environment. The national tension on racial justice has made clear the deep cleavages across the university and remind us of the great inequities that remain in our university and the symbols at our university that call to a history that was not so kind to students of color.

And so we need to especially think about this larger context, how it affects students, and what we do at the university. We can, for example, provide university faculty and staff training on how to build supportive networks to improve retention and graduation rates. An important part of this is

providing more financial aid. Especially as students might lose DACA, they may not be able to continue in school and may have to drop out.

So for example, the new \$100 million in scholarships approved by the Board of Regents to improve diversity could be used to support DACA and undocumented students, to assure that they successfully complete their studies. And we know that student organizations are key for mentoring and student success. So we need to increase our support for student organizations and take them and their concerns seriously, let them be a voice of DACA and undocumented students. And let's listen to what they need and respond to them.

And lastly-- almost lastly, we can't forget that students have families that live in our communities. And so we have to extend our work to the communities, because what happens to families affects DACA holders and affects our students. And given that, we need to advocate for more sensible immigration reform, and we need to advocate for path to citizenship for DACA recipients. Thank you, and I pass it on now to Professor Morrison.

- Thank you so much, and I'm really happy to be here with my other panelists. So today, I'm going to focus on DACA and the workplace. And I'm going to cover three main things, which first, I want to provide a snapshot of the documented workforce. Then second, I want to talk about the workplace rights that documented workers have. And then I want to end with some things that employers can do to support their workers who are DACA recipients.

So when we're talking about the documented workforce, 83% of people with DACA are in the labor force. And many of those who aren't in the labor force are actually in school. So from those in the labor force, 95% are employed by employers. And another 5% of those in the labor force are self-employed.

Now, the U.S. Chamber of Commerce had a report in 2018, and the Chamber reported that it would cost businesses \$6 billion in worker turnover costs, including training and hiring, if DACA ends. And the Chamber also reported that DACA-eligible workers contribute \$1.4 billion in federal taxes, \$2 billion in Social Security taxes, and \$470 million in Medicare each year. So we can see that DACA recipients-- and because of the Supreme Court decision which for now keeps DACA in place and, of course, the attendant employment authorization-- that those DACA workers contribute and are part of the American workforce.

So what are the workplace rights that people with DACA enjoy? So all of the federal workplace protections apply and most of the state workplace protections as well. So those include anti-discrimination laws, like Title 7 which prohibits discrimination on the basis of race, color, religion, national origin, or sex, age discrimination employment, which protects workers from discrimination based on age, specifically over the age of forty, disability under the Americans with Disabilities Act, genetic discrimination under GINA, and then there are other laws like the OSHA Act, the Occupational Safety and Health Act, which requires employers to provide a safe and healthy workplace, the Family Medical Leave Act, and then the Fair Labor Standards Act, which governs wages as well as work hours and other conditions of work.

So for people who have DACA and have employment authorization, there are many advantages as opposed to maybe the condition before, which was being unauthorized. So there are no differences in remedy, so people who have work authorization can get back pay. And someone who is unauthorized and discriminated against in the workplace often is unable to recover things like back pay. But most importantly, it's lawful for employers to hire people with DACA. So the prohibitions on hiring people who are unauthorized don't apply to people who have DACA and have employment authorization.

There are other protections under the law as well. So a law that Congress passed in 1986, the Immigration Reform and Control Act, which made it unlawful for employers to hire unauthorized workers and required employers to verify workers' identities and work-authorized status, also included anti-discrimination provisions. Because Congress was concerned that with these requirements for checking people's identity and work authorization, the employers would engage in discrimination on the basis of national origin or citizenship. So there are national origin protections. So just as under Title 7 this law, IRCA, prohibits employers from discriminating against employees on the basis of national origin.

Employers also cannot discriminate against employees as far as documents. So we would call this document discrimination. So under IRCA, employers may not require more or different documents for the I9 verification process or require employees to reverify their work authorization, other than when that employment authorization expires or for other reasons, like if it's necessary to comply with an Immigration and Customs Enforcement audit.

Now, under IRCA, there are citizenship discrimination provisions. But IRCA limited who that applies to. And IRCA said that it only protects people who are legal permanent residents, who are admitted as refugees, or people who are granted asylum. So IRCA citizenship discrimination provisions would not cover people who have DACA and work authorization pursuant to that.

But recently, people who have DACA have brought lawsuits against employers who engage in citizenship discrimination under Section 1981. So Section 1981 was part of the laws that Congress passed after the Civil War. And some courts have allowed these lawsuits to go forward under Section 1981, which prohibits intentional race and citizenship discrimination for people who are discriminated against who have DACA, based on not being-- because they weren't legal permanent residents or they weren't citizens.

So federal courts in New York, Florida, Washington, and California have all allowed some of these lawsuits to go forward. And in fact, just last month, a federal district court in Florida in a case, *Rodriguez v. Procter and Gamble*, said a lawsuit could go to trial in which the plaintiff, an individual who had DACA, said that the employer had discriminated against him based on his citizenship status.

So there, the plaintiff, whose name was David Rodriguez-- he came to the United States when he was 14 years old. After he graduated from high school, he started college part time. And in college, he was on the dean's list, and he was majoring in business administration. He eventually graduated with a 3.96 GPA, so he was a good student.

While he was still in college, so in 2012, he applied for and he received DACA. And several months later, he applied for a finance and accounting internship at Procter and Gamble. So Procter and Gamble at the time had a policy that any applicants who lived in the United States had to be legally authorized to work with no restraint on the type, duration, or location of employment. So the company rejected Mr. Rodriguez under that policy, because the DACA work authorization only provided for two years of employment authorization.

So he sued, and one of his allegations was that the company had engaged in citizenship discrimination under Section 1981. The company asked the court to grant summary judgment. And so that's a process lawyers will use to get a case dismissed prior to trial. And the company argued that its decision was actually based on immigration status, which would be permissible, and not citizenship status, which would be unpermissible under 1981.

Now, the court rejected that argument, because it said based on the text of the statute, which said it protected individuals within the jurisdiction of the United States, someone who was work-authorized pursuant to DACA would be protected under the statute. And it also looked at the legislated history of the statute, and said that it's clear that Congress wanted to protect non-citizens from discrimination when it passed Section 1981, and it didn't carve out any protection or lack of protection for any groups of immigrants or subclasses of immigrants. So it looks like, at least for now, a lot of courts are saying people who have DACA are even protected from citizenship status discrimination under Section 1981.

So another type of, I guess, not now the workplace protection but post-workplace protection that applies to people with DACA is unemployment insurance, and I want to mention that specifically just because of the current pandemic. So under Texas state and federal law, you must be work-authorized during the base period of employment, so the time you were employed. You must continue to be work-authorized when you apply for the unemployment insurance. And you must continue to be work-authorized during the time that you receive the unemployment insurance. And that's because of a requirement that says the employee must be able and available.

So employees who have employment authorization because of DACA are eligible for employment insurance, and that applies to the Pandemic Unemployment Assistance Program as well. Only covered individuals may receive assistance, and TWC and some other agencies are interpreting that as requiring workers to be able and available. So if you have employment authorization, you'd be able to get unemployment insurance. Then as far as unemployment insurance benefits go, they're not a factor in public charge determinations, because they're considered earned benefits not public benefits. So they should not impact future ability to apply for, say, a green card or legal permanent resident status.

So finally, I want to end with just four points about what employers could do to support their employees with DACA. So like I said, there are four main things I wanted to cover. So the first is that employers can create a policy that employees can be rehired later if their EAD, their Employment Authorization Document, lapses. So the first part of that policy can be that employers can give a reasonable time for employees to present new documents. So an employer can place an employee on unpaid leave for a reasonable period of time if the employer

reasonably believes that the employee will be able to present documents that the employee is work-authorized.

So an example of this is if there's a delay in processing the Employment Authorization Document and the employee shows, say, a Department of Homeland Security receipt notice about the Employment Authorization Document, the employer could place that employee on unpaid leave instead of terminating them. Now, if the employer has to fire the employee, then something the employer can do is notate the employee file to make it clear that the employee is eligible for rehire once the employee gets the Employment Authorization Document.

Now, second thing employers can do to support their documented workers is to make sure that their human resources personnel managers and supervisors know about, are trained on, and are accountable for ensuring that the rights of documented workers and employees are protected. A third thing that employers can do is they can fund DACA renewals for employers-- or employees, and they can also support non-profits who conduct DACA renewal workshops.

And then finally, employers can be really important in advocating for permanent legislative solution for people who have DACA and their families. And so that concludes my coverage of DACA in the workplace. I'm happy to take Q&As later in the Q&A session. And I'll turn it over to Professor Marouf.

- Thank you. So I'm going to talk a little bit more about the public health effects of DACA, just because we're in the middle of a pandemic here. And then I'll also talk about what's happening right now with DACA applications. I know we had a lot of questions about that that I'll answer, and then we can certainly take more questions during the Q&A. I'm going to keep my comments pretty brief so that we have ample time for Q&A.

So the public health impacts of DACA, which we've already started discussing, are-- studies have found they really rival those of large-scale public health policies. As was mentioned, the impact on psychological stress and mental illness is quite significant, and those benefits extend to the children of DACA recipients, so to U.S. citizens. Studies have also shown that DACA reduces the likelihood of poverty for households with eligible people by 38%. So of course, that also has significant impacts on health.

If DACA is rescinded, DACA recipients would lose their health insurance through employment, and that's critical because 57% of DACA recipients are currently-- they currently have health insurance through their job. So if they lose their work authorization, that's going to create a whole new pool of uninsured people. The largest pool of uninsured people in the United States already is undocumented people. So that means they'll be relying more on safety net hospitals and emergency rooms, since they're excluded from the ECA and can't buy their own insurance through the exchanges.

So they'll be also less likely to seek health care, because studies have shown us that when people are undocumented, they fear going to go see providers because of their deportable status. And they're concerned that their information will somehow get to ICE. And they'll be especially less likely to get preventative care. So for example, undocumented pregnant women are less likely to

get prenatal care, and therefore, more likely to have preterm and low birth weight U.S. citizen babies.

Studies have also shown that undocumented immigrants are less likely to enroll their U.S. citizen children in public benefit programs for which they're able, like Medicaid and WIC. So that's another way that this has an impact on U.S. citizen children. So being undocumented in general is associated with worse physical and mental health. People are more vulnerable to poverty, violence, and workplace hazards. They have higher rates of chronic illnesses, and they have these barriers to accessing health care, which affects a whole range of health outcomes. And interestingly, even in states where undocumented immigrants are eligible for health services, studies show that they are afraid to go and take advantage of them because of this fear that their information will get to immigration officials.

So immigration policies are actually quite a significant social determinant of health that are often overlooked. It shapes the racialization of people of color and this climate of whether it's an inclusive or exclusive society and how discriminatory that society feels to immigrants. It therefore affects the sense of economic and social security or insecurity, the trust that people have in our public institutions, the decisions about whether to use and how to use health services. And states and localities have an important role to play in this. As you may know, several states have extended health insurance to undocumented immigrants, and that can make quite a significant impact.

But more broadly, rescinding DACA at this point-- if the Trump administration does try to do it again-- will have also a huge public health impact on the United States. There is an estimated 27,000 health care professionals with DACA status, who are depending on that work authorization to work as health care professionals. And that includes 200 medical students, residents, and doctors who depend on their DACA to practice medicine. And it's estimated that those 200 people will touch the lives of millions of patients.

So if DACA is rescinded, that loss of health care professionals would happen during a time when the U.S. actually has an aging population and a huge need for more health care professionals. There is a big shortage in this country of anywhere from 46,000 to 120,000 physicians-- is what that shortage is estimated to be by 2032. And underprivileged areas would be especially affected. Interestingly, 97% of undocumented youth who express an interest in health careers plan to ultimately work in their own neighborhoods where they grew up or other underserved areas. So they play a particularly important role in treating underprivileged populations.

In the Supreme Court case, the Association of American Medical Colleges submitted an amicus brief that specifically talked about the impact that rescinding DACA would have on the health sector and on the shortage of health care professionals. It also talked about the enormous investments that health care professional schools, such as medical schools and other professional schools, have made as well as hospitals. That would be lost if DACA were rescinded. So for example, hospitals have invested \$5 million, just in training medical students with DACA status.

I'm going to turn to just a few ways that DACA recipients are affected by the CARES Act, since we got a couple questions about that. So the CARES Act has many components. One involves

emergency grants that are given to colleges and universities to distribute to students. That's in the amount of \$14 billion. And DACA recipients appear to be excluded from that. That's what the Department of Education is saying. There's some dispute about it, but currently, they're not getting those grants.

However, DACA recipients do qualify for the \$1,200 one-time payments for individuals earning less than \$75,000 and who filed taxes in 2018 or 2019 using a social security number. So the key there is that anyone who filed jointly with a DACA recipient, say, has to also have had a social security number. So if it's a mixed status family where one of the filers had a social and the other person didn't, they would not be eligible for that \$1,200 payment.

In terms of health care treatment, there is \$100 billion that's going to reimburse hospitals for treating uninsured patients, regardless of immigration status. So any DACA recipients who are uninsured or become uninsured should be able to benefit from that money. There's also \$2 billion going to community health centers, which provide treatment regardless of immigration status.

So in terms of the impact on decisions about filing for DACA-- so as you know, we are waiting-- as you might know, we are waiting on U.S. Citizenship and Immigration Services to issue guidance. There was guidance that was in place before the Supreme Court ruling, and they have not yet issued new guidance. But we do know that people who currently have DACA should be able to file a renewal, that those whose DACA expired one year ago or less should be able to file a renewal. For people whose DACA expired more than a year ago, they cannot renew, but they should be able to file an initial DACA request. And similarly, for people whose DACA was terminated at any point, they can't renew, but they can file an initial DACA.

Now, a lot of the questions that are coming up are from people who've never previously had DACA and want to apply for the first time. And that is where getting some guidance from USCIS is going to be really important. They should be publishing that guidance immediately. But of course, with the Trump administration announcing that it's planning to rescind DACA again, we don't know for sure if that's going to happen.

However, because the Court's decision does leave the DACA program in place, legally, you should be able to file a new application now. Similarly, you should be able to file an advance parole request to travel outside of the country, because that was part of the original 2012 DACA program as well. There should be separate guidance coming on advanced parole requests. Of course, given the pandemic and the uncertainty around travel, I think a lot of attorneys don't think it's a great idea to apply for advance parole right now, especially until DHS publishes some guidance.

I think the general factors that immigration attorneys are thinking about in advising DACA recipients or people who want to apply for DACA-- well, I should say specifically for people who want to apply for a new initial DACA application, there are some things to consider and some risks. If a new memorandum is issued rescinding DACA, that could have a negative impact. If you've already applied, then your information would be with USCIS, and that could potentially be used to find somebody and deport them later on.

It's also possible that USCIS will reject new initial applications or accept them and then deny them. And it's also possible that they'll simply delay adjudication. So these are really difficult questions that should be made in consultation with an attorney, ideally, who can advise you specifically about an individual situation if you're trying to decide for your own purposes whether to submit a new application or not at this point. There are definitely some risks, especially in applying before any guidance is issued, but that's an individual decision that has to be made. So I'm going to turn it over now to Professor Herrera-- Dean Herrera to moderate our Q&A.

- Great. Well, thank you to our great panelists. We appreciate all of the knowledge that you've shared with us. And we only have right now one question, which you just answered in terms of first time applicants. And so I invite the audience to ask any additional questions that you might have that the panel can help you with.

And I'll start off. I have a question. So if I'm a high school senior and I'm eligible, but I've been too afraid to apply, but I don't have the money to hire an attorney, what do I do? Just hold off until more information is available?

- There are organizations that will provide pro bono assistance. Our clinic is one that you can call here in this area. But there's different organizations all around the country that might be able to provide some guidance. Some schools also have resources within the university or college or high school even maybe that could help. But the filing fee itself is a challenge for many people, as was noted earlier. And so unfortunately, there's not the fee waiver that exists for many other types of immigration applications for DACA.

- As university faculty and administrators or even teachers in high school, how do we best prepare ourselves for a rescission? What can we do? And I know there's not an answer, because we're all hoping it doesn't happen. But what's some of the advice that folks are giving?

- So I'll start. I mean, I would say the first thing is-- and most people have done this-- but consult with an immigration attorney and see if there might be some other form of immigration relief available in case it's rescinded. And then I'll say one other thing, and then I'll let other people do it.

But I would say also start making a plan about what you might do if DACA gets rescinded and other ways you might be able to make a living. For example, is there some sort of business that you could open or start or some way you could work as an independent contractor? Which is legal for people to do. It's just illegal for someone to hire someone as an independent contractor if they know that the person's unauthorized. So those would be two of my suggestions.

- Great. Well, thank you. Anybody else want to chime in? And then we are getting some questions now.

- I would just say, this is not on a legal [INAUDIBLE] but to support students and find mental health support and organizational support. Find faculty who are willing to be a support system. And I know at the College Station campus, that's council for minority student affairs, and we

have a wonderful psychologist who provides care specifically to undocumented and documented students. But the university needs to be ready to provide these types of resources.

- Great. And Professor Morrison, there is a question that I think you want to answer regarding unemployment DACA applicants. And maybe you can restate the question and answer.

- Yeah, so the question is about DACA applicants for unemployment. And I don't know if it's someone who hasn't had an answer since the pandemic started or wondering what's happened. But people who have DACA and have employment authorization and were employed and became unemployed as a result of the pandemic and continue to have employment authorization are eligible for unemployment insurance. And they can apply to, say, the Texas Workforce Commission here in Texas, and will get it as long as they continue to have the employment authorization.

- Great. And there are a couple of questions that really ask, if there is a new rescission that meets the Court's requirements, is this something that you think will occur and can impact DACA before the elections? In terms of timeline, what could this look like?

- So I believe that the administration has prepared documents. That's what I read a couple days ago. Is that correct, Fatma? I remember you and I were--

- I'm thinking they're going to file this week, but who knows. They said that last week, too.

- So in some ways, you could read the Supreme Court's decision as providing a bit of a roadmap for the administration, in terms of what the Court's concerns are. I think we can be confident that any decision by the administration to terminate or try to terminate DACA will be challenged in court. And what the Supreme Court said is not just a check-off list, this is what the administration has to do. I think that courts have generally really probed agencies when they make these kinds of policy decisions.

So although the Supreme Court's decision gives a bit of a roadmap, I do think that there will be legal challenges to any attempt to terminate DACA. And I suspect if the challengers are savvy, which incredibly, they are, they will probably choose to challenge it in a jurisdiction that may be more favorable to immigrants. And so I think these courts will [INAUDIBLE] a bit of form shopping.

And so I think that courts that would be reviewing any challenges will look very carefully at the reasons the administration is offering. And I think there's a good chance that there would be an injunction pending legal appeals. Where are we? We're in July? It feels like November is a lifetime away.

July through November is a question about whether any legal challenges and appeals-- how far they get and whether the administration is successful. And I suspect there would be injunctions issued. And so the question is whether the agents-- the administration could successfully appeal any injunctions that are issued in the time before the elections.

- And there's a question about how many-- what can people do in terms of applying for DACA themselves? They're not going to be able to hire an attorney. And so are there resources that provide information for first time applicants that you could recommend?

- There certainly are resources. The ILRC is one example. Different organizations have pro ses or packets online or information guidance online in terms of how to complete the DACA application. Those were all based on-- prior to the Supreme Court's decision.

If I was not represented right now, I would probably wait for USCIS to issue guidance, because we don't know exactly what they're going to want from first time applicants. There might be some changes made. So I would not just try to get in an application right now in general. But I say that because I know a lot of people won't be able to consult with an attorney.

But there's really no short answer on this. Lawyers are just guessing like everybody else as to what could happen and using their best judgment. But I think waiting for guidance from USCIS would be a good first step, especially because something will probably happen within the next week or so. And so there's really no immediate rush to get an application in right now. I'll let others weigh in on their thoughts on this. I don't know, Professor Morrison, if you have any thoughts on this or not.

- I just agree with what you said.

- But if you look online, there are packets to show you how to fill out a DACA application. For example, the ILRC-- I just pulled it up here-- has a packet that was published in March 2019, so about a year ago, called Annotated DACA Application Packet, which is one example.

- Great. So we've reached our time. I think there are a couple of other questions. And so if the panelists are able to respond to them by typing some answers, that would be really helpful, if you can see them. And I'm going to go ahead and wrap up the webinar by thanking our panelists for being so helpful in helping us understand what the legal issues and implications are of the Supreme Court decision on DACA.

And I want to remind those of you who are online that this is part of a series on [Immigration Practice and Policy During the Pandemic](#). There are a few more webinars that are going to be coming up. July 22, there's one on [Requesting Bond, Parole, and Custody Review during COVID](#). There's also another one on July 31 on [Human Rights at the Border during COVID](#), August 4th, [Changing Technology in Immigration Court and Beyond](#). And so that information you can see on the PowerPoint that's listed for you.

So we'll stick around and try to answer the additional questions by typing some responses. But thank you all for being with us today, and we appreciate you being involved with our webinars. You can find more of these webinars, or if you want to send a link to the conversation that we had today, you can look at [TAMULawAnswers.info](#). Have a good afternoon. Does anybody want to answer that last question that's still there?

- I was just going to say that last question, I just can't even-- I don't know if someone would get a notice to appear and getting denied unless there was some sort of serious criminal conviction. But it's just hard for me to guess, given the restrictions on immigration. And that's why I think we really are waiting for guidance from DHS-USCIS before being able to really make good recommendations. But I think it's definitely a risk.

- Thank you, Professor Morrison.

While the panelists are all attorneys, they will be discussing the law generally, and nothing in the webinar should be considered as legal advice. Attendees should consult their own legal advisor to address their own unique circumstances.