

Opinion | OP-ED CONTRIBUTOR

# The Truth About Young Immigrants and DACA

By JANET NAPOLITANO NOV. 30, 2016

OAKLAND, Calif. — Maybe you've heard this story line before. With the blithe stroke of a pen and without congressional approval, President Obama gave legal status to a vast population of immigrants who entered the country unlawfully — because he wanted to, and because he found a way.

I'm referring to the Deferred Action for Childhood Arrivals program. That program is called DACA, which until the recent presidential campaign was an acronym known by few beyond the nation's immigrant communities or the Washington beltway. Now DACA is trending news, and not in a good way.

This narrative about an initiative that has given temporary haven and work authorization to more than 700,000 undocumented minors, the so-called Dreamers, still has critics howling about presidential overreach, about brazen nose-thumbing at the rule of law and about encouraging others to breach the borders of the United States.

But there's a problem with this take on the program. It is dead wrong. While much has been made about our incoming president possibly eliminating DACA with his own swift pen stroke, there has been scant attention paid to the careful, rational and lawful reasons for creating the program, which, especially now that its future is in doubt, merit a closer look.

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As secretary of the Department of Homeland Security, I signed the June 15, 2012, directive that began, “I am setting forth how, in the exercise of our prosecutorial discretion, the Department of Homeland Security (D.H.S.) should enforce the nation’s immigration laws against certain young people who were brought to this country as children and know only this country as home.” On the same day, President Obama announced DACA from the Rose Garden in a message heavy on common-sense law enforcement — and hope.

I arrived in the department as a former United States attorney, attorney general and governor of a border state, and I already knew that many of our immigration policies made little, if any, sense because they did not prioritize the use of enforcement resources.

As secretary, I changed enforcement policies to focus on those immigrants who posed a national security or public safety threat, such as gang members and violent felons, and not on veterans, nursing mothers and those with longstanding ties to their communities.

Prioritizing the use of resources in law enforcement is nothing new. It is known as “prosecutorial discretion,” and we can see it all around us — from local police departments deciding whom to pull over instead of stopping every speeding car to federal prosecutors focusing on larger financial fraud instead of going after every bad check.

Indeed, the authority of the federal government to exercise prosecutorial discretion has been repeatedly recognized by the Supreme Court, including in a seminal opinion by Justice Antonin Scalia.

Our efforts to use immigration enforcement resources wisely made a real difference. But when it became clear that Congress was not going to take action on comprehensive immigration reform, I realized that more needed to be done with respect to one special population — Dreamers.

Dreamers, among other requirements, came to the United States as children, developed deep roots in the country and have become valuable contributors to their

community. They must be in high school or have a diploma, or be a veteran, and they cannot have been convicted of a felony or major misdemeanor.

For this population, we developed DACA. Under this program, qualifying individuals apply for what is known as “deferred action,” which provides recipients security against removal and the ability to work lawfully for two years, subject to renewal.

Contrary to the sometimes overheated political rhetoric, the program is not the same as amnesty. Each case is assessed on its own merits to ensure the applicant meets the criteria and poses no security threat. This is similar, but not identical, to how a prosecutor decides to charge a case. The program does not grant categorical relief to an entire group.

Today, there are nearly three-quarters of a million Dreamers who no longer have to constantly fear an encounter with an immigration enforcement agent. Instead, they can live, study and work freely. Many are now studying at the system I lead, the University of California.

They are the Berkeley graduate who emigrated to San Francisco at the age of 9 and is now in the system’s medical school there. They are the U.C.L.A. student who, at the age of 12, worked in construction to help support his family, an experience that led him to study urban planning and community development.

Some of the debate about the future of DACA suggests that it provides Dreamers an official immigration status or a pathway to citizenship. As the memorandum establishing the program made clear, this is not the case. Only Congress has the power to confer those rights.

Rather, the program reflects the executive branch doing what it properly does every day — making decisions about how to best use resources within the framework of existing law. There is no reason to abandon these sensible priorities now.

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