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## A BEACON OF HOPE: DREAMERS AND TAXATION

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## A BEACON OF HOPE: DREAMERS AND TAXATION

*Gaby Pacheco*\*

In the United States, there are about 1.8 million people who entered the country as children who do not hold legal immigration status but would be eligible for Deferred Action for Childhood Arrivals (DACA),<sup>1</sup> and that group is part of a total universe of upwards of 3 million<sup>2</sup> of those who would be eligible for some sort of status under the Dream Act.<sup>3</sup> These individuals are commonly known as Dreamers. Most Dreamers have lived an average of ten years or more in the United States and have grown up understanding and embracing American culture.<sup>4</sup> Currently above working age, under the 2023 Dream Act, Dreamers have a median age of twenty-four.<sup>5</sup> Despite living in a legal limbo, many of these young people have pursued higher education, with some currently attending college and others having already graduated with

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<sup>1</sup> See *Deferred Action for Childhood Arrivals (DACA)*, USA.GOV, <https://www.usa.gov/daca> (last updated Dec. 8, 2023) (“DACA temporarily delays the deportation of people without documentation who came to the U.S. as children.”); see also *Who and Where the DREAMers Are, Revised Estimates*, AM. IMMIGR. COUNCIL (Oct. 16, 2012), <https://www.americanimmigrationcouncil.org/research/who-and-where-dreamers-are-revised-estimates>.

<sup>2</sup> *Who and Where the DREAMers Are, Revised Estimates*, *supra* note 1.

<sup>3</sup> Development, Relief, and Education for Alien Minors Act, S. 1291, 107th Cong. (2002).

<sup>4</sup> *Dreamers by the Numbers*, FWD.US (Mar. 7, 2023), <https://www.fwd.us/news/dreamers-by-the-numbers/>.

<sup>5</sup> *Id.*

bachelor's degrees or higher. Furthermore, over 1.3 million Dreamers, representing six in ten, are actively contributing to the workforce.<sup>6</sup>

For Dreamers, paying taxes transcends mere obligation; it becomes a beacon of hope for their future immigration benefits or potential changes in status. Some Dreamers are fortunate to have secured work authorization under programs like DACA or Temporary Protective Status (TPS).<sup>7</sup> Others, undaunted by challenges, embark on entrepreneurial journeys, sowing the seeds of their own ventures.

The reality holds that Dreamers and immigrants alike, regardless of their official status, shoulder the responsibility of paying taxes in the land they call home. According to the CATO Institute's estimations, a considerable percentage, ranging from 50%–75%, of undocumented immigrants dutifully comply with federal tax laws, debunking any myths that attempt to tarnish their commitment to contributing to the nation's growth.<sup>8</sup> In America, citizen or not, taxes are for all, including Dreamers.

Through this contribution, we endeavor to foster a deeper understanding of the intricate interplay between tax compliance, immigration, and the indomitable spirit of these Dreamers who, with unwavering determination, strive to forge their paths in the land of opportunities. We aim to shed light on the traps, lessons learned, and important considerations in this often-overlooked area of tax policy.

## I. BACKGROUND

In the late 1990s, Hispanic high school dropout rates were significantly higher than those of white students and Black students, as reported by the October 1999 National Center for Education Statistics (NCES).<sup>9</sup> States like

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<sup>6</sup> *Id.*

<sup>7</sup> See *Temporary Protective Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status> (last updated Feb. 8, 2024).

<sup>8</sup> Alex Nowrasteh, *The 14 Most Common Arguments against Immigration and Why They're Wrong*, CATO AT LIBERTY (May 2, 2018), <https://www.cato.org/blog/14-most-common-arguments-against-immigration-why-theyre-wrong>.

<sup>9</sup> Thomas D. Snyder & Charlene M. Hoffman, *Digest of Education Statistics 1999*, 127 Tbl. 108, NAT'L CTR. FOR EDUC. STAT. (2000), <https://nces.ed.gov/pubs2000/2000031.pdf>.

California and Texas responded to this issue using the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which granted states the right to provide in-state tuition to undocumented students.<sup>10</sup> Texas House Bill (H.B.) 1403, signed into law on June 16, 2001, allowed eligible undocumented students, including DACA recipients, access to in-state tuition.<sup>11</sup> The bill outlined specific requirements for Texas residency eligibility, including graduation from a public or private high school in Texas, at least three years of residency in Texas, registration as an entering student in an institution of higher education not earlier than the 2001 fall semester, and providing an affidavit stating the intention to file an application to become a permanent resident at the earliest opportunity.<sup>12</sup> California followed Texas and became the second state to pass such legislation.<sup>13</sup>

Simultaneously, at the federal level, Congressman Luis Gutierrez responded to the plight of talented young individuals growing up in the country by introducing the first version of the Dream Act in May 2001.<sup>14</sup> It was also introduced in the Senate by Republican Orin Hatch and Democrat Dick Durbin.<sup>15</sup> The legislation aimed to provide a solution for these individuals who were losing hope, offering them the opportunity to pursue their college and, more crucially, career aspirations. When the Dream Act failed to pass Congress several times since 2001, the Obama administration took a significant step on June 15, 2012, by announcing the creation of the

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<sup>10</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 505, 110 Stat. 3009-672.

<sup>11</sup> 2001 Tex. Gen. Laws 3582 (relating to the eligibility of certain persons to qualify as residents of [Texas] for purposes of higher education tuition or to pay tuition at the rate provided to residents of [Texas]). See also *Texas In-State Tuition: What You Need to Know*, HIGHER EDUC. IMMIGR. PORTAL, [https://www.higheredimmigrationportal.org/wp-content/uploads/2023/05/TX-1-pager-PA-and-TDUS-may-2023\\_V2.pdf](https://www.higheredimmigrationportal.org/wp-content/uploads/2023/05/TX-1-pager-PA-and-TDUS-may-2023_V2.pdf) (last visited Mar. 1, 2024).

<sup>12</sup> 2001 Tex. Gen. Laws 3582, 3582.

<sup>13</sup> CAL. EDUC. CODE § 68130.5 (West 2001), commonly known as “AB 540.” See *California Nonresident Tuition Exemption*, CAL. STUDENT AID COMM’N (last visited Feb. 23, 2024).

<sup>14</sup> Dylan Matthews, *Rep. Luis Gutiérrez Explains How Immigration Reform Gets out of the House*, WASH. POST (July 22, 2013, 9:00 AM), <https://www.washingtonpost.com/news/wonk/wp/2013/07/22/rep-luis-gutierrez-explains-how-immigration-reform-gets-out-of-the-house/>.

<sup>15</sup> *Id.*

DACA program.<sup>16</sup> As a stop-gap measure, DACA provides protection from deportation and grants a work permit to undocumented youth who meet specific requirements.<sup>17</sup> Over the past two decades, Dreamers have navigated through public schools, graduated from public high schools, and, in twenty-five states, attended college while benefiting from in-state tuition rates.<sup>18</sup>

Today, according to the Presidents' Alliance on Higher Education and Immigration, the total universe of Dreamers who could benefit from the Dream Act or Dream provisions is likely close to 3 million.<sup>19</sup>

These 3 million U.S. residents, lacking permanent immigration status, contribute to the economy and social well-being of the nation. DACA recipients, comprising half a million of the 3 million Dreamer population, pay over \$9.4 billion in taxes annually,<sup>20</sup> with experts estimating that ending the DACA program would cost the U.S. economy approximately \$390 billion.<sup>21</sup>

For those without work authorization provided by DACA or TPS, Dreamers use the IRS Individual Taxpayer Identification Number (ITIN)

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<sup>16</sup> *Remarks by the President on Immigration*, NAT'L ARCHIVES (June 15, 2012, 2:09 PM), <https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration>.

<sup>17</sup> *Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/DACA> (last updated Sept. 18, 2023).

<sup>18</sup> *Portal to the States*, HIGHER EDUC. IMMIGR. PORTAL, <https://www.higheredimmigrationportal.org/states/> (last visited Feb. 23, 2024).

<sup>19</sup> *Breakdown of Dreamer Populations—Both With and Without DACA*, PRESIDENTS' ALL. (Dec. 6, 2022), [https://www.presidentsalliance.org/breakdown-of-dreamer-populations-both-with-and-without-daca/#:~:text=Dreamers%20are%20undocumented%20immigrants%20who,DREAM\)%20Act%20was%20first%20introduced.](https://www.presidentsalliance.org/breakdown-of-dreamer-populations-both-with-and-without-daca/#:~:text=Dreamers%20are%20undocumented%20immigrants%20who,DREAM)%20Act%20was%20first%20introduced.)

<sup>20</sup> Nicole Svajlenka & Trinh Q. Truong, Ctr. for Am. Progress, *The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition* (Nov. 14, 2021), <https://www.americanprogress.org/article/the-demographic-and-economic-impacts-of-daca-recipients-fall-2021-edition/#:~:text=Nov%2024%2C%202021-,The%20Demographic%20and%20Economic%20Impacts%20of%20DACA%20Recipients%3A%20Fall%202021,billion%20in%20taxes%20each%20year.>

<sup>21</sup> Phillip Connor, *A DACA Fix Could Add \$400 Billion to the U.S. Economy in the Next 10 Years*, FWD.US (Dec. 5, 2022), <https://www.fwd.us/news/daca-fix/>; see also Logan Albright et al., *A New Estimate of the Cost of Reversing DACA 8* (CATO Inst., Working Paper No. 49, 2018) (estimating a reversal of DACA would cost \$351 billion).

created in July 1996 to comply with U.S. tax laws.<sup>22</sup> According to the Institute on Taxation and Economic Policy, at least 50% of undocumented immigrant households file income tax returns using ITINs.<sup>23</sup>

## II. WHY DREAMERS PAY TAXES

Dreamers, with or without work authorization, Social Security Numbers (SSNs), or ITINs, have payroll, state, and federal taxes deducted from their paychecks.<sup>24</sup> And every year in April, many Dreamers pay their taxes as a duty, believing it is their obligation as Americans without legal status, to do so. They aspire to become U.S. citizens, acknowledging that paying taxes is a requirement for filing immigration benefits and legal status applications. An example is an immigrant with an immigration petition who typically needs an affidavit of support. Under the Immigration and Nationality Act, an immigrant with a family-based or employment-based petition must file Form I-864 to demonstrate adequate financial support and show they will not become a public charge.<sup>25</sup> If their loved ones are not able to submit this form because they do not earn enough money, some immigrants, having worked in the United States for at least ten years and earned at least forty quarters of Social Security payments, can file their own waiver, Form I-864W.<sup>26</sup> It is crucial that tax professionals understand who Dreamers are and why for them paying taxes can be beneficial.

Lastly, like most undocumented immigrants, Dreamers, despite lacking legal status (illegal immigration itself is either a civil violation or a misdemeanor), are law-abiding individuals who consider themselves Americans in every aspect except on paper.

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<sup>22</sup> *Individual Taxpayer Identification Number*, IRS.GOV, <https://www.irs.gov/individuals/individual-taxpayer-identification-number> (last updated Jan. 4, 2024).

<sup>23</sup> Lisa Christensen Gee et al., *Undocumented Immigrants' State & Local Tax Contributions*, INST. ON TAX'N & ECON. POL'Y 3 (2017), <https://itep.org/undocumented-immigrants-state-local-tax-contributions-2017/>.

<sup>24</sup> *Id.*

<sup>25</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 423, 110 Stat. 2105, 2271–74 (amending the Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163) (codified at 8 U.S.C. § 1183A).

<sup>26</sup> *Form I-864, Affidavit of Support Under Section 213A of the INA*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/sites/default/files/document/forms/i-864.pdf> (last visited Feb. 4, 2024).

### III. CONCLUSION

While Dreamers may not be eligible for most tax benefits, it is critical to note that there may be some benefits like the Child Tax Credit or the American Opportunity Tax Credit for which Dreamers may be eligible.<sup>27</sup> However, unlike their legal family members, colleagues, and friends, and although they contribute significantly to the fabric of this nation, paying their fair share into public benefits supporting Social Security, Medicare, Medicaid, and other services, they are not eligible to receive most benefits legal citizens receive from filing their taxes. Unlike their legal family members, colleagues, and friends, these Dreamers do not receive the benefits of paying their fair share into public benefits (e.g., Social Security, Medicare, Medicaid). In spite of this, every year they file taxes because they believe it is their duty and hope to one day be given an opportunity to regularize their status and become legal Americans.

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<sup>27</sup> See I.R.C. §§ 24 and 25A.