

Dreams Deferred: United States Policies that Shape Undocumented Immigrant Youth

Cesar E. Montelongo Hernandez, PhD, Loyola University Chicago, Stritch School of Medicine

Corresponding Author

Cesar Montelongo Hernandez, cmontelongoherna@luc.edu
ORCID iD: [0000-0001-9541-5513](https://orcid.org/0000-0001-9541-5513)

ABSTRACT

Undocumented children in the U.S. are an especially vulnerable population. Government policy often dictates the benefits and services that undocumented children may access. Undocumented children can attend free K-12 education and while there is no federal law that prohibits enrollment in higher education, their access to in-state tuition and financial aid limits opportunities. In most cases undocumented children will be unable to be employed or be licensed (i.e., professional license, driver's license), the main exception being those protected by Deferred Action by Childhood Arrivals (DACA). At present, undocumented children struggle for health access cannot enroll in insurance coverage under the Affordable Care Act (ACA). Currently policies are being discussed at the federal level that could either benefit or harm undocumented children. Here we review the major federal policies in the U.S. that impact the lives of undocumented children, including education, employment and health access. Physicians can utilize this information to better approach these patients.

1. Introduction

Undocumented youth are children and young adults that lack either U.S. citizenship or other forms of legal status. It is estimated that there are 1.1 million undocumented minors in the U.S.^{1,2}. Immigration to the U.S. by youth may not occur by their own volition, but rather be part of a larger family decision³. Some may not even realize they were brought to the U.S. until they are young adults^{3,4}.

Undocumented youth may have equal opportunities to the average American early in life, yet the gulf becomes more apparent as they near adulthood³⁻⁵. As the undocumented child matures, they face a complex web of constraints on opportunity dictated by federal, state, and institutional policies⁵⁻⁹. Hurdles will frequently underscore their limitations and coming to understand their “illegal” status may be an emotionally difficult experience⁴. Although there is a high degree of diversity and variability in the background of undocumented youth, core to their identity is their immigration status¹⁰. Undocumented people cannot be legally employed, travel freely, have access to federal aid, have access to government documentation that is critical for livelihood in the U.S., among others^{6,11}. All of this imposes sizable implications on the undocumented youth's well-being, self-worth, and opportunities.

A fundamental question that the many ask regarding the undocumented population is, “Why can't they just become legal?”¹². The short answer is that there is no clear path to do so. Legal immigration in the U.S. is a complex and individualized topic. Factors that may influence an individual's ability to adjust their status range from how they entered the U.S., their country of origin, sponsorship by a naturalized relative, or having undergone extreme circumstances (e.g., victims of criminal activity)¹². Undocumented youth are often brought to the U.S. at a young age and therefore cannot control many of these factors^{3,4}. As per the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), undocumented immigrants are counter-intuitively penalized for leaving U.S., even if this is necessary as part of adjusting to a lawful immigration status¹³. This process is even more difficult for undocumented youth that entered the U.S. unlawfully (e.g., not using a VISA), even when this unlawful action was committed as minors before they had the capacity to consent. Currently there is no consistent or streamlined pathway for permanent U.S. residence, with options like sponsorship by a relative potentially taking decades to process^{14,15}. In the past decade, the most viable option has been protection under DACA, but even this has severe limitations^{8,16-18}.

The DREAM Act and DACA have been key components of the identity of undocumented youth, at least in public perception^{6,19}. “Dreamers” are those individuals that would adjust their status under The DREAM Act, legislation that was first introduced in 2001 but has never been approved by Congress^{20,21}. The DREAM Act would provide legal status and a pathway to U.S. citizenship for those that meet a stringent set of criteria. Undocumented youth may also be “DACAdmented”, named after DACA which is an executive branch memorandum signed by President Obama in 2012 that granted renewable deferral from deportation¹⁷. During the 2010s, DACA was often synonymous with undocumented youth as many were able to achieve a semblance of normality via this policy¹⁷. Officially DACA does not confer a legal status, but it does provide a Social Security Number (SSN) and an Employment Authorization Document (EAD)²². An SSN and EAD are key for major

components of normal life in America, such as obtaining lawful employment, a driver's license, and other countless processes that require a government ID. Approximately 825,000 individuals have been granted DACA²³ since the program's inception.

DACA was upheld unchanged until its rescission in 2017 by the Department of Homeland Security (DHS) under the Trump administration^{16,18}. The fragility of DACA was due to being an executive branch memorandum and not legislation by Congress. DACA's rescission led to a years-long legal battle that culminated in the Supreme Court of the United States (SCOTUS)^{8,24}. Ultimately, SCOTUS sided with DACA but soon after the DHS made crucial changes to DACA that limited its benefit to undocumented individuals. At present only those with DACA can renew on two-year intervals, while those that did not come of age prior to DACA's challenges are unable to apply. These changes have left approximately 200,000 undocumented youth without the protections as they come of age²⁵. All these factors have implications for the education, employment, and health of young undocumented immigrants.

2. Education of undocumented youth

It is estimated that there are 600,000 undocumented students in K-12²⁶. It is possible for undocumented youth to have a childhood comparable to most Americans, at least during K-12 education. The Family Educational Rights and Privacy Act (FERPA) protects the data of undocumented children by making it unlawful to share their immigration status to non-school personnel²⁷. Organizations like Immigration Customs Enforcement (ICE) will not target schools outside of exceptional circumstances²⁸. Due to this, schools are theoretically a haven for undocumented children. Furthermore, the Supreme Court ruling in *Plyler v. Doe* stated that undocumented children cannot be discriminated by schools unless there is a substantial benefit²⁹. Undocumented students can therefore expect privacy and rights at least until they graduate high school. That said, undocumented children still face many challenges, in large part due to their immigration status and that of their parents^{4,30}. It has been estimated that only about 40% of undocumented students do not complete high school, a rate very similar to their citizen peers⁴. Of those that do earn a high school diploma, approximately only half attend college, with that number dropping further towards college graduation⁴. It must be noted that no federal law in the U.S. prohibits undocumented students from enrolling in higher education.

Two of the most influential policies on the autonomy of undocumented youth results from IIRIRA and Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), passed under the Clinton administration^{13,31}. These policies had multiple major implications, especially as related to higher education of the undocumented. Under the IIRIRA, it became unlawful for states to offer in-state college tuition to undocumented students unless this was extended to out-of-state residents. Under the PRWORA, it became unlawful for federal aid to be granted undocumented students. This included not just grants and scholarships but also loans, which extended to graduate education and prior to DACA made it nearly impossible for undocumented students to consider options like attending medical school^{32,33}. Furthermore, the PRWORA dictated that U.S. states could not provide state financial aid for higher education unless the individual state passed a law to supersede this policy.

The barriers created by IIRIRA and PRWORA compound to create a heavily unfavorable situation for undocumented youth pursuing higher education. This is in addition to undocumented students and their parents often being in economically unfavorable conditions^{2,4}. There was a silver lining though in that neither the IIRIRA nor the PRWORA outright prohibited undocumented students from attending higher education^{13,31}. In addition, the wording of the IIRIRA and PRWORA could be interpreted by states and higher education programs in a range of ways. While some states use both policies as the bedrock to deny higher education to the undocumented, throughout the 1990s to 2010s more progressive states passed laws that would facilitate this^{34,35}. Even now there is a nation-wide patchwork of policies at the level of states and individual universities³⁶.

One of the major policies relevant to education of undocumented youth is DACA. While DACA did not provide a lawful status, it did confer an EAD and SSN^{8,17}. The EAD allowed undocumented youth to be legally employed, which was even more important in states or programs that denied financial aid. An EAD also gave a means to exercise the skills and degrees obtained by the undocumented. The SSN was key for enabling further documentation, such as obtaining driving licenses. Students could use their EAD and SSN to relocate to regions in the U.S. that were more favorable to their higher education pursuits. Less tangible but arguably important is that DACA became a recognized status for undocumented youth. DACA status could be adopted in administrative and institutional procedures (e.g., prior to DACA it may not have been possible for undocumented students to specify their status on enrollment applications). DACA could now be an easily recognizable status usable for advocacy, further extending representation and benefits to undocumented students.

Nevertheless, there were obstacles that DACA was not made to overcome. Even with DACA, undocumented students could

not be provided with federal financial aid as per the PRWORA³¹. Certain graduate education paths (e.g., medical school) were still difficult, given that these assume that applicants can access federal financial aid^{32,33,37}. Despite its shortcomings and temporary nature, DACA was a highly effective and influential policy for the education of undocumented youth. By extension, its repeal and continued challenge in the courts have been major blows to the undocumented community²⁴.

3. Employment of undocumented youth

Despite a higher degree of assimilation, undocumented youth share many of the challenges of other undocumented immigrants^{4,30}. Given access to K-12 and higher education, undocumented youth are likely to have higher skills (e.g., English proficiency) than their parents, yet the limitations of their status can force them into the same job pool⁴. In the absence of work authorization, undocumented youth must be employed in jobs with little or no administrative oversight (e.g., cash jobs)^{30,38}. This leaves undocumented youth vulnerable to exploitation, lack of work opportunities, and benefits². Further difficulties can be linked to a lower socioeconomic status that makes it more difficult to acquire the soft skills needed to be hired, retain a job or be promoted^{4,30}.

One of the greatest benefits to the undocumented youth workforce in the last decade was DACA^{8,17,18}. The SSN and EAD afforded by DACA allowed undocumented youth to be legally employed. Undocumented youth could access jobs that they were previously disallowed to have even when they had the appropriate skills or qualifications^{8,17}. Undocumented youth were less likely to be threatened based on their immigration status, and thus could better access and advocate for workers' rights and benefits^{30,38}. In certain states, they could apply for driver licenses which would further facilitate employment, commuting, and relocation³⁹.

An erroneous critique of DACA is that it allowed undocumented people to take advantage of government benefits. With DACA, undocumented people still cannot access welfare (i.e., TANF), federal financial aid, ACA insurance, unemployment benefits, nor social security^{11,40}. There is evidence that undocumented immigrants pay taxes but cannot access a wide range of government benefits, resulting in a net gain for the nation^{11,23}. Rather DACA made the productivity and their contribution to this country more transparent. It has been reported that DACA recipients hold 343,000 jobs in essential industries⁴¹. DACA recipients are estimated to own 68,000 homes in the U.S., pay \$6.2 billion in federal taxes, and \$3.3 billion in state and local taxes each year⁴¹.

A further benefit of DACA is that it facilitated education and licensing^{33,42}. DACA recipients can legally work concurrently while pursuing their education. DACA was the basis for specialized training, such as undocumented physicians being employed by medical residency programs^{32,43}. Multiple states have permitted that DACA recipients apply for and be licensed in fields like law, medicine, nursing, among others⁴⁴. In short, DACA expanded the career possibilities for undocumented youth to near parity with U.S. citizens.

As expected, the challenges to DACA and its partial reinstatement resulted in significant hardship for undocumented youth. Simply put, the loss of DACA means that undocumented youth would no longer be employed legally and would likely lose their jobs. At present, DACA can be renewed on a two-year basis which means that undocumented youth must live their life two years at a time. Sadly, the situation is even more dire for undocumented youth that would apply to DACA for the first time. New applications are not presently allowed, and so a new generation of undocumented youth must come of age without the option of legal employment²⁴.

4. Healthcare of undocumented youth

Undocumented youth face acute and chronic healthcare challenges, in large part due to limited access to health insurance^{45,46}. The PRWORA restricted access of undocumented immigrants to Medicaid⁴⁷. Furthermore, undocumented individuals, including those with DACA, are barred from Medicare and the ACA Marketplaces⁴⁸. The Children's Health Insurance Program (CHIP) is not available to the undocumented in many states^{45,49}. Undocumented immigrants may access health insurance through their employers, but this is prevented by all the challenges of finding appropriate employment described in the previous section⁴⁶. Undocumented immigrants may purchase health insurance outside of ACA marketplace, but their limited income may prevent this.

Federal law requires hospitals to stabilize patients in a medical emergency, including the undocumented^{50,51}. Limited Medicaid can be extended to undocumented immigrants for emergency services⁵². Healthcare systems may also extend sliding scale or waive fees for undocumented patients. These options are not ideal and result in delayed care and unattended

ailments in the undocumented population. Of note is that six states (California, Illinois, Massachusetts, New York, and Washington), plus Washington D.C., extend healthcare services to undocumented children⁴⁶.

Another factor that undocumented youth must contend with is the mental toll of their status⁵³. U.S., anti-immigrant rhetoric and policy can result in depression, stress, and anxiety in undocumented children⁵⁴. For example, the “Zero Tolerance” enacted by the Trump administration resulted in families (including children) being detained at the U.S.-Mexico border, in some cases placed in cages, which was often reported on the media and viewable by undocumented youth⁵⁵. Surveillance and policing of communities by the U.S. Immigration and Customs Enforcement (ICE) and the Customs and Border Protection (CBP, i.e., border patrol) can also strain the mental health of undocumented children^{56,57}. Once aware of their status, undocumented youth must contend with its implications the well-being of themselves and their family⁴. As these children come of age, they face the mental, physical, and emotional toll of being undocumented compounded by the challenges of adulthood^{13,4,30}.

While much uncertainty is present in the lives of undocumented youth, there are resources that physicians can use to improve the care of undocumented youth. For example, “Sanctuary Doctoring” is a clinical method that outlines steps to approach and treat the undocumented, in addition to making available educational resources for the clinician and patient⁵⁸. The American Academy of Pediatrics has published a tip sheet and toolkit to support immigrant children in addition to resources for pediatricians^{59,60}. Clinicians treating undocumented youth should ideally adopt psychological support, education, and legal resources as a standard of care. In addition, clinicians can advocate for humane immigration legislation by directly contacting their elected officials, bringing attention to advocacy in their medical associations, and contacting their health system’s government relations department.

5. Conclusion

It can be argued that optimism for undocumented youth peaked with the advent of DACA and until the mid-2010s^{8,17}. The years of the Trump administration were marked with increased restrictions and hostility, primarily in the attempts to rescind DACA^{16,18}. The election of President Biden and his immigration platform renewed optimism for undocumented youth, but so far, no major progress has occurred^{23,61}.

Early in his administration, President Biden restored DACA via executive order⁶². President Biden also presented a plan for the 11 million undocumented immigrants in the U.S., which includes a pathway to citizenship which intended to fast-track DACA recipients and extend protections to those without DACA⁶¹. Furthermore, attempts to pass the DREAM Act occurred once again at the end of 2022⁶³. These policies would have been life-changing for undocumented youth but unfortunately neither gained approval by Congress. Even worse is that DACA continues to be challenged in the courts; on October 5th, 2022, the appeals court agreed that state challenges to DACA were valid and that President Obama’s creation of DACA was not lawful²⁴. Consequently, the Biden administration has made efforts to defend DACA, but many believe these judicial challenges will eventually prevail⁶². As of early 2023, the Department of Homeland Security (DHS) continues to process DACA renewal applications but cannot approve new applications²⁴.

While approving immigration legislation has been an ongoing issue for decades, we must consider what can be a permanent solution to this issue^{12,64}. Immigration policy in the U.S. is arguably “broken”, requiring immigrants to meet not just a high degree of requirements but wait decades or else languish in limbo⁶⁵. Historically immigration legislation in the U.S. is oriented in reverse, fixing the problem after it has occurred without attention to how the problem will inevitably reoccur. After each major immigration overhaul in the past, the undocumented immigration population will accumulate again for 20 or 40 years until legislation is passed again. The optimal solution is for the United States to enact forward-looking immigration reform that is sustainable, enforceable, and fair. This is especially relevant for undocumented youth, who can be assets to this nation if given the opportunity. In the absence of a permanent and sustainable legislative solution, undocumented youth may suffer preventable damage to their education, employment, and health.

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