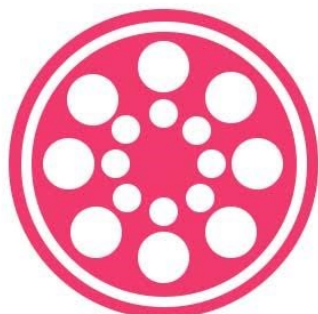




DACA, the Dream Act and Dreamers



Observatorio de Legislación y Política Migratoria

Ever since Donald Trump won the election, the first thought for many immigration advocates was about the future of dreamers. With such anti-immigrant rhetoric displayed during the campaign and having surrounded himself with clearly anti-immigrant politicians such as Jeff Sessions and Kris Kobach, the future of the Deferred Action for Childhood Arrivals (DACA) program remained unclear.

At first the administration indicated that they were keeping the program, even though Trump campaigned against it. He later changed his mind and expressed support for dreamers and his reluctance to terminate the program. More concretely, DACA renewals continued throughout the year, and on June 15, 2017 former DHS Secretary John Kelly announced that the program



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would remain while DAPA—which was challenged in courts and never implemented—[was cancelled](#).

In spite of the administration's apparent support of DACA, the recalcitrant anti-immigration forces spearheaded by Texas threatened a lawsuit by September 5th against [the federal government to force it to rescind the program](#). This would require a defense by the Office of the Attorney General, which is led by Jeff Sessions, an adamant opponent of DACA.

The alternative option for dreamers and DACA is an executive renewal of the program, the opponent states could take it to court but DACA dreamers would remain temporarily protected. As the deadline set by Texas Attorney General came, the Trump administration announced their decision to rescind and phase the program out, thus leaving thousands of DACA protected youth in disarray. Before and since the announcement dreamers activated their advocacy network now aimed at Congress to pass the DREAM Act, but also the executive, and continue to spread the word about who they are, how they belong in this country, as well as point out their contributions.

Understanding the law: IIRIRA, the DREAM Act and dreamers

In 1996, the U.S. Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ([IIRIRA](#)). This piece of legislation set the basis for the criminalization of immigration in the United States. With regards to undocumented youth, Title V, *Section 505* of IIRIRA precluded undocumented students from accessing higher education:

Title V, Section 505: “a) Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible *on the basis of residence* within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident. (b) Effective date. – This section shall apply to benefits provided on or after July 1, 1998.”

It was against this federal policy that undocumented youth—the dreamers—began to organize and advocate for themselves thus forming a social movement that today has demonstrated to be unique, vocal, persuasive, and successful. In their emergence as political actors, the first generation of dreamers had

as their initial goal to have access to higher education, and the different state and federal financial support provided to citizens and residents.

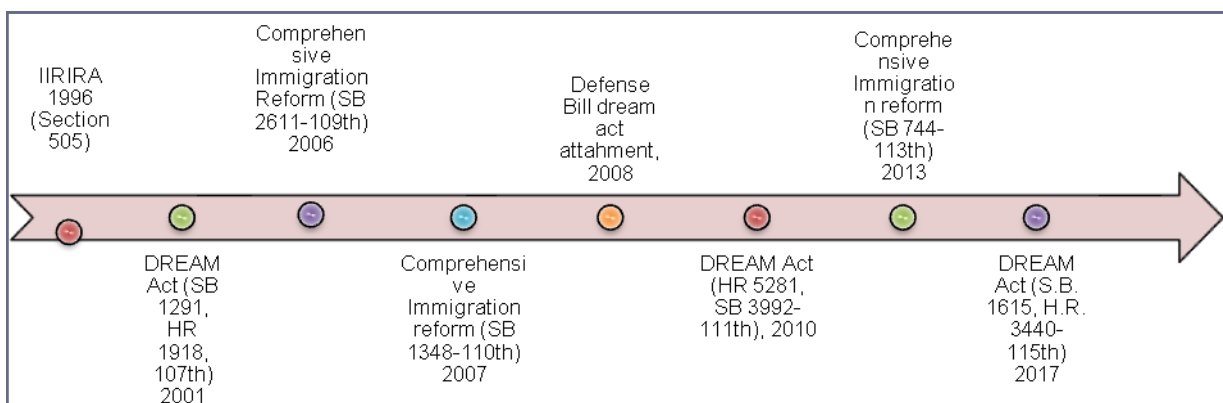
Early on dreamers learned to act both at the local, state, and federal level. At the federal level they began to fight for the Development, Relief, and Education of Alien Minors, DREAM ACT. The first DREAM Act bill, [S. 1291](#), was introduced in the Senate by Dick Durbin (Democrat, Illinois) and Orrin Hatch (Republican, Utah) on August 1, 2001. Durbin and Hatch proposed the original bill based on stories of young people who were trying to continue their education, work, and have a future. Pauline Lee was the original student who inspired Senator Durbin to introduce the DREAM Act in 2001, [to put undocumented immigrant children on a pathway to U.S. citizenship](#). In Durbin’s opening remarks to the Senate, he presented some of these young people, and he called the dreamers’ predicament [“one of the most compelling human](#)

[rights issues of our time”](#).

At the same time, in April 2001, the House introduced a similar bill, [HR 1582](#) (107th) by Luis Gutiérrez, later changed to the Student Adjustment Act, [HR 1918](#), to allow states to “cancel the removal and to adjust the status of certain alien college-bound students who are long-term U.S. residents.” The legislative branch has considered different versions of the original S. 1291 DREAM Act. The bill has seen many forms throughout the years, whether as part of larger pieces of legislation as in the Senate comprehensive immigration reform of 2006—[SB 2611](#) (109th)—and the 2007 Comprehensive Immigration reform Act—SB 1348 (110th).

After the Immigration Reform of 2006 failed to pass, Senator Durbin attached a modified version of the DREAM Act to the Department of Defense Authorization Bill of 2008, which included the option of serving two years in the army as another path dreamers could follow. This aspect has remained as

Timeline DREAM Act



of the different subsequent versions of the DREAM Act. In 2010, the DREAM Act gained momentum and its passage seemed viable as the House approved it—[HR 5281](#), (111th)—but the Senate version—[SB 3992](#) (111th)—lacked enough support. In 2013, the Senate passed SB 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, which included a dream act provision.

On July 20, 2017, senators Lindsey Graham (R-South Carolina) and Dick Durbin (D-Illinois) reintroduced the Dream Act of 2017, [S. 1615](#) (115th) in the Senate “to authorize the cancellation of removal and adjustment of status of certain individuals who are long-term United States residents and who entered the United States as children, and for other purposes”. A few days earlier, Congresswomen Ileana Ros-Lehtinen (R-Florida) and Lucille Roybal-Allard (D-California) introduced the Dream Act, [H.R. 3440](#), in the House on July 26, 2017. As with the previous versions of the [DREAM Act](#), the purpose of these bipartisan and, in this case, bicameral bills is to “provide Dreamers — young undocumented immigrants who were brought to the United States as children and have lived in the U.S. at least four years — protection from deportation and an opportunity to obtain legal status if they meet certain requirements.

Dreamers as political actors: Dreamers actions at the federal level

Dreamers became political actors as they began fighting for the right to access higher education almost two decades ago when they were pressing Congress for the passage of the DREAM Act. In the dreamers’ case, their subjectivity as a collective began to take shape as individual stories made their way to the Senate and the House, and evolved into the DREAM Act. However, the reason these stories came to be public and persuasive was because of the existence of a legal obstacle that precluded them from accessing higher education (Section 505 of IIRIRA).

The legal roadblocks that dreamers kept finding to achieve their life goals became the source of inspiration for their appearance in the public arena as political actors. As many dreamers narrate in the testimonies presented throughout their different campaigns, their status was a source of shame for them, for many it created hopelessness, and kept them in the shadows.

The dreamers social movement began as a grassroots one, articulated through social media, university student organizations, and immigrant rights advocacy groups. Together they have formed alliances among themselves as well as with key political figures.

In 2010, for example, [dreamers campaigned in support of the DREAM Act through the use of Internet, text messaging, twitter, fax, emails, to Congressmen and Senators](#). Also, as part of this coordinated effort, organizations such as America’s Voice, Asian American Justice Center, Presente.org, Change.org, League of United Latin American Citizens, Reform Immigration for America, Sojourners, NCLR, Justice for Immigrants, Sisters of Mercy, CREDO Mobile, and United We Dream/DREAM Activist collected and delivered thousands of petitions from individuals, organizations, academics, state and local officials, faith communities, in support of the DREAM Act to the Senate.

Among the most original and moving campaigns that emerged in 2010 to support the DREAM Act was the one called “DREAM Now: Letters to Barack Obama.” This campaign joined forces with the Dreamers caravan to Washington D.C. “Trail of Dreams” from Miami to D.C., which expanded to other states. In “Letters to Obama” dreamers wrote to the president telling him their stories of living as undocumented youth, about the fear, the shame, or the surprise of finding out that they were undocumented and couldn’t continue their education or work, or construct a future. [Through these letters we see the stories of](#)

[young people who have lived, studied, worked, married, built a life, many of whom found themselves placed in deportation procedures.](#)

“Letters to Obama”, “Trail of Dreams”, “Coming Out Undocumented”, “Undocumented and Unafraid” are some of the many efforts by dreamers. Likewise, as different events were organized in local arenas, they ended up registering “for the DreamActivist.org domain, which began in 2007. [This led to the formation of the United We DREAM national network in July 2009.](#) From their actions at the federal level, forming coalitions and networking, dreamers simultaneously pushed for education equity at the state level and for the DREAM Act at the federal level. Their efforts gained a partial victory in 2012 when president Obama ordered the application of Deferred Action for Childhood Arrivals (DACA) program.

Thinking national, acting local: dreamers’ actions at the state level

While dreamers began their efforts at a national scale, it is at the state level where the main political battles have taken place and where dreamers have had the best results.

At the local level dreamers have been very effective in obtaining the support of universities, legislatures, business leaders, and community advocates.

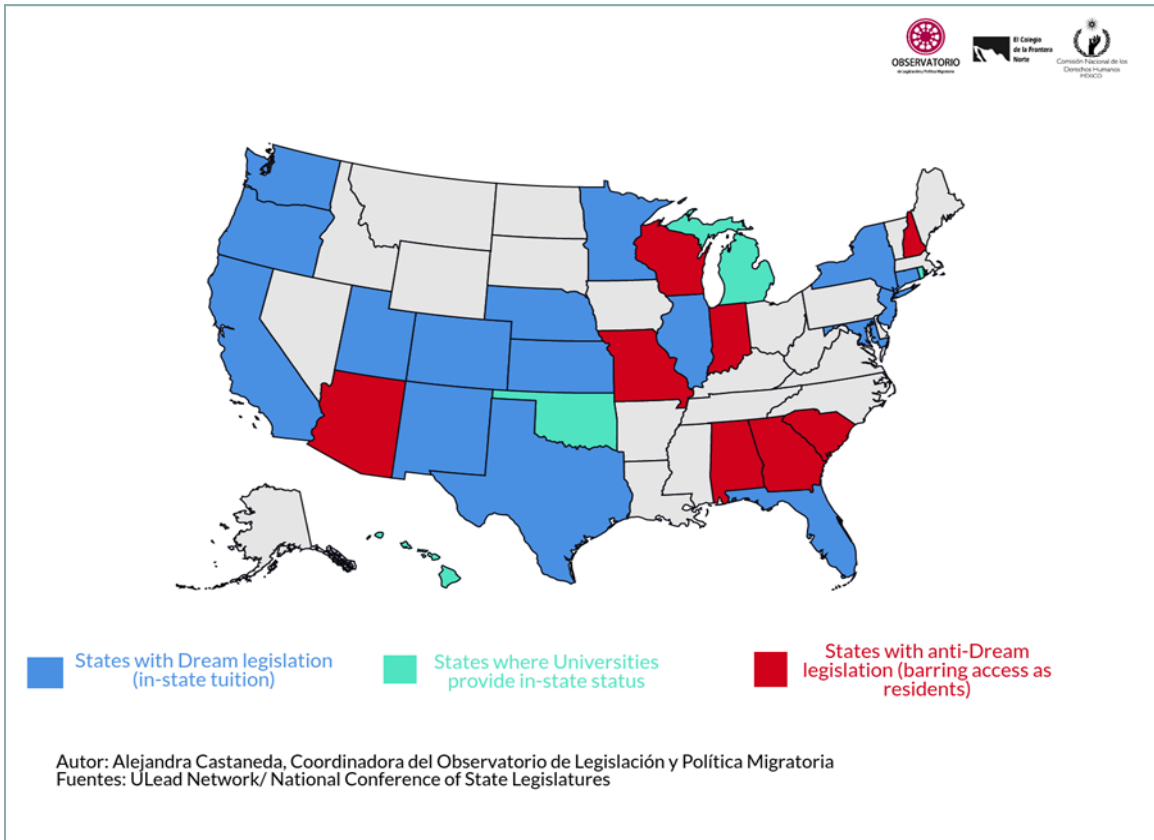
The Dream Act at the state level allows undocumented youth to continue their studies by making them eligible for in-state tuition if they graduate from state high schools, have two to three years residence in the state, and apply to a state college or university. While states that have approved DREAM Act legislation allow undocumented youth to access higher education, these students are precluded from obtaining federal support for their higher education.

In June 2001, Texas with [HB 1403](#) and California with [AB 540](#)—the latter taken to courts, and implemented until 2010—became the first states to approve laws to allow undocumented students to qualify as residents for the purposes of obtaining in-state tuition. **Utah** ([HB144](#)), and **New York** ([SB 7784](#)) in 2001-2002 followed the lead of these two states; as well as other states: in 2003 **Washington** ([HB 1079](#)), **Illinois** ([HB 60](#)), and **Oklahoma** ([SB 596](#))—although this state in 2008 passed [HB 1804](#) which ended its in-state tuition benefit, including financial aid, for students without lawful presence in the United States. **Kansas** ([HB 2145](#)) in 2004; **New Mex-**

ico ([SB 582](#)) in 2005; **Nebraska** ([LB 239](#)) in 2006; **Wisconsin** ([A 75](#)) in 2009; **Maryland** ([S 167](#) /H470) and **Connecticut** ([H6390](#)) in 2011 approved their own Dream acts. In September, 2011, **Rhode Island's** Board of Governors for Higher Education approved policy to allow unauthorized students to pay in-state tuition at public colleges; in 2013, Oregon approved its own DREAM act ([HB 2787](#)), as well as Minnesota ([SF 723](#), [HF 875](#), [SF 1236](#)), New Jersey ([SB 2479](#)), Colorado ([SB 33](#)); in 2014 Florida ([HB 85](#)) joined other states in allowing students to qualify for in-state tuition. In July, 2011, **California** enacted legislation permitting unauthorized immigrant students to receive financial aid and scholarships ([AB130, 131](#)).

States that have barred unauthorized immigrant students from in-state tuition benefits include **Arizona** ([Proposition 300, 2006](#)), **Colorado** ([HB 1023, 2006](#)) although in was cancelled by the approval of the DREAM Act in 2013; **Georgia** ([SB 492, 2008](#)), **South Carolina** ([HB4400, 2008](#)), and **Indiana** ([H 1402, 2011](#)).

The struggle for the DREAM Act at the state level continues, in many instances to preserve it, in others to enact it, and in some cases to preclude undocumented students from accessing higher education with



in-state tuition. The legislative changes are without a doubt the result of student’s mobilization and their capacity to create alliances. In spite of their evident legal vulnerability, even more so in Trump’s administration, these young people that came to the U.S. when they were children have decided to occupy the public space and make their existence evident, that is, they perform their abject category and turn it around into one that is full of meaning, symbolism, life, as they proclaim: “undocumented and unafraid”.

A life changing victory: DACA

The Obama administration expanded immigration enforcement throughout the United

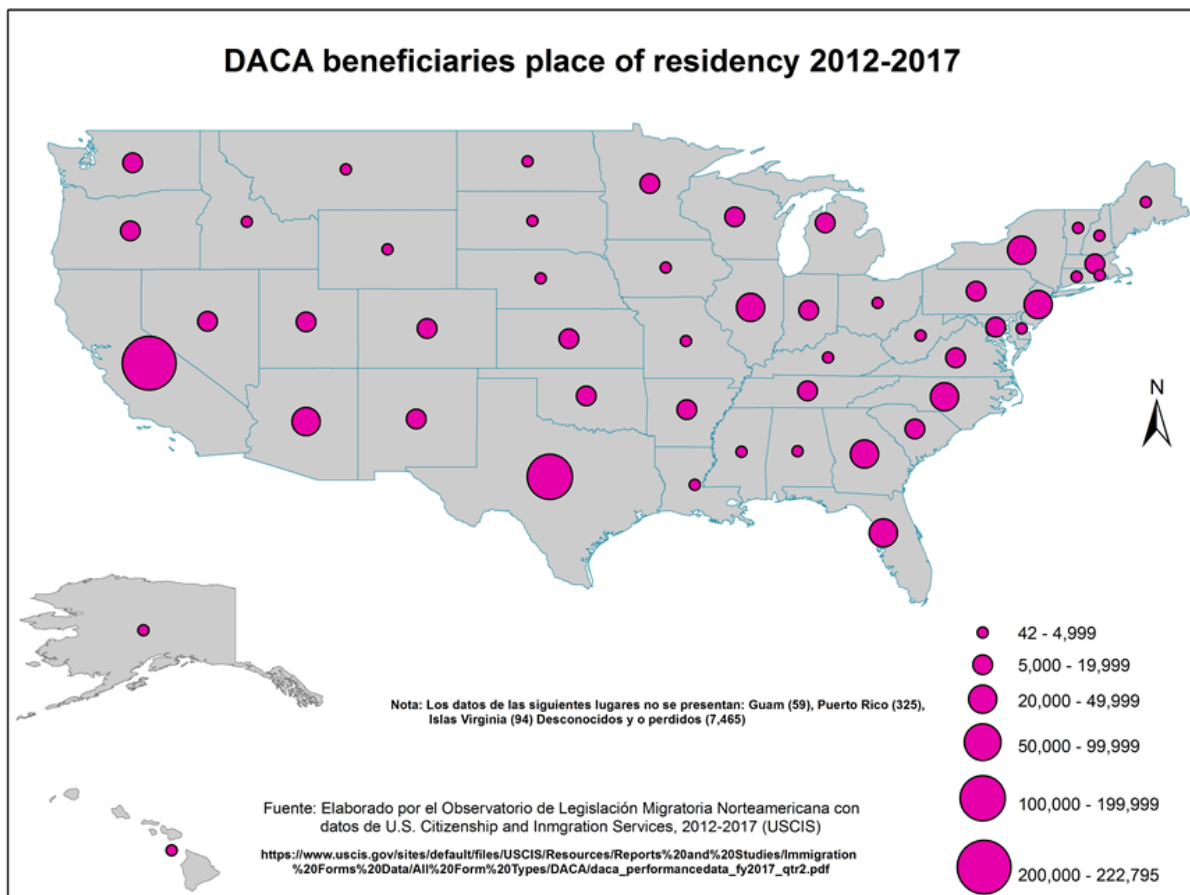
States by way of the program Secure Communities with the consequential increment in the number of deportations and family separations. The constant threat of deportation and the lack of opportunity for a future for dreamers contributed to their decision to be proactive in trying to advocate for themselves and their families.

At the same time that dreamers and allies pushed for immigration reform in the House and Senate, they continued campaigning vis a vis Obama. On June 15 of 2012 dreamers’ efforts came to fruition when president Obama made the decision to protect dreamers from deportation by announcing the [Deferred Action for Childhood Arrivals \(DACA\) program](#).

Since DACA's implementation in 2012, close to **800,000** dreamers have benefited from the program which granted them a temporary reprieve from the threat of deportation, and provided them work authorization. This two aspects gave them the opportunity to obtain a driver's license along with, depending on the state, access to higher education as residents of their states. For many, the possibility of working has been the real transformative factor as it has allowed dreamers to move beyond mini-

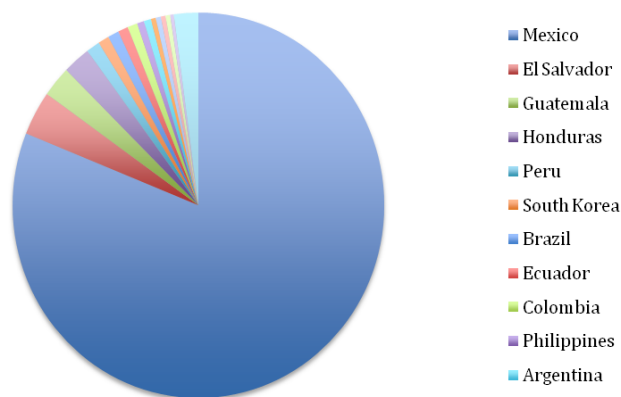
imum wage paying jobs, as well as sustain their higher education studies.

According to the **PEW Research Center** approximately 1.1 million youth were potential beneficiaries of DACA, nevertheless the number of DACA approvals ended up being 787,580 of a total of 936,394 applications to USCIS, and mainly reside in California (222,795) and Texas (124,300), although they are present in every state as the map below shows.



Of those approved, the majority was born in México—618,342—however, DACA [beneficiaries come from many different countries](#) as can be seen in the following table:

DACA approved by country*



Conclusion: upcoming scenarios

As DACA was finally rescinded by the Trump administration on September 5, 2017, many voices have come public in support of the dreamers. In the past days we have witnessed national campaigns in support of DACA and dreamers going from immigration advocacy organizations, religious leaders, to business leaders. Facebook founder Mark Zuckerberg, for example, dedicated a week on his Facebook page to call for support for DACA protected dreamers. Companies like Apple, Amazon, Microsoft, LinkedIn, Lyft, Best

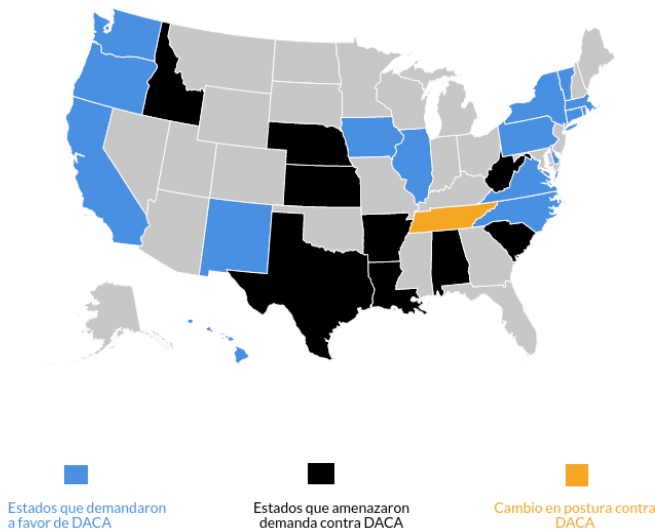
Buy, Starbucks, General Motors, among many more [have signed a letter in support of DACA and dreamers](#).

A permanent solution for dreamers is to pass the DREAM Act in Congress. Political gestures by the Senate and the House have already started, with the Senate demonstrating a better possibility for an approval of the DREAM Act. The House, on the other hand, is already placing any immigration reform consideration—DREAM Act or not—at the back of the line of the legislative agenda, protecting dreamers is not a priority nor is it politically popular among republican constituents that vote in primaries.

It was Attorney General Jeff Sessions who, in the name of the executive, announced the [cancelation of DACA](#) on September 5th. For Sessions this represents a highlight in his efforts to enact a restrictionist and nativist immigration agenda, which he has demonstrated throughout his political career, especially in the Senate where he obstructed any attempts of immigration reform that included regularization of the undocumented population. It is evident that with regards to the cancellation of DACA Sessions hardline anti-immigrant approach prevailed.

An alternative scenario to the legislative—which is definitively the permanent solu-

State lawsuits for and against DACA



tion—will play out in the courts as the space where most of the resistance to the xenophobic, anti-immigrant agenda has been manifesting itself. In his arguments to justify the rescission of DACA, Sessions states that the program was unconstitutional and that it would not stand in courts. As stated in the memorandum, the office of the Attorney General determined that DACA “was effectuated by the previous administration through executive action, without proper statutory authority and with no established end-date, after Congress’ repeated rejection of proposed legislation that would have accomplished a similar result. Such an open-ended circumvention of immi-

gration laws was an unconstitutional exercise of authority by the Executive Branch.” In other words, Sessions adjudicates himself the role of the Supreme Court of the land and decides what is constitutional or not.

The government’s decision to cancel DACA by presenting a false or untested problem with the potential lawsuit against DACA by Texas and other states, however, has been met with several lawsuits, [the first one by 15 states and D.C.](#), one by California, another by the University of California, as well as one by ACLU.

In this sense, the scenario with regards to dreamers is moving in multiple layers: at the legislative level with the DREAM Act; the legal one with the states lawsuits but also with the individual lawsuits; finally and foremost in the public sphere where dreamers display the personal stories to conjure support and place political pressure. With an uncertain outcome, dreamers await for a solution to their conundrum, and an opportunity to live their lives without the worry of being deported, and losing their present and their future.

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