3-13-2023

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taxnotes® state

Volume 107, Number 11 ■ March 13, 2023

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Reprinted from *Tax Notes State*, March 13, 2023, p. 955

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The Search for Tax Justice is a *Tax Notes State* series examining the inequities inherent in state and federal taxes.

In this installment, Jacqueline Laínez Flanagan, associate professor of law at the University of the District of Columbia David A. Clarke School of Law, argues that the tax revenue benefits of the Deferred Action for Childhood Arrivals program illustrate the need for additional, innovative approaches to immigration reform.

America's aging population and declining birth rates are negatively affecting the nation's Social Security and Medicare safety nets, reducing tax revenue, and weakening the broader economy.[1] Meanwhile, immigration is increasing workforce participation by expanding the number of young adults in the United States.[2] Despite political setbacks, the Deferred Action for Childhood Arrivals (DACA) program exemplifies the economic and tax benefits of immigration, providing data and the impetus for a better way forward. Although not all DACA-eligible youth have registered for it, it is estimated that in 2017 alone, more than $2.2 billion in federal taxes were paid by DACA-eligible youth — directly benefitting Social Security and Medicare.[3]

Enacted under President Obama in 2012, DACA allowed youths who qualified for the program the right to legal employment in the United States, with estimates indicating a 91 percent employment rate for DACA recipients.[4] DACA protection allows immigrant youths with no other path to legalization the opportunity to work, seek higher education, and pay taxes.[5] Tax contributions from workers covered under DACA add to state and local tax receipts, including sales, property, and income taxes.[6] In 2019 DACA recipients paid a total of $3.1 billion in state and local taxes and $5.7 billion in federal taxes.[7] Despite its myriad benefits, DACA is temporary, intended as a stopgap, and perennially under

[1] William H. Frey, "New Census Estimates Show a Tepid Rise in U.S. Population Growth, Buoyed by Immigration," The Brookings Institution (Jan. 4, 2023).

[2] *Id.*

[3] New American Economy Research Fund, "Overcoming the Odds: The Contributions of DACA-Eligible Immigrants and TPS Holders to the U.S. Economy" (June 3, 2019).

[4] Dan Kosten, "Immigrants as Economic Contributors: Immigrant Tax Contributions and Spending Power," National Immigration Forum (Sept. 6, 2018).

[5] "The DACA program was originally established under a Presidential Executive Order in June 2012 to protect certain undocumented immigrants who were brought to the U.S. as children from removal proceedings and receive authorization to work for renewable two-year periods. To be eligible, individuals must have arrived in the U.S. prior to turning 16 and before June 15, 2007; be under the age of 31 as of June 15, 2012; be currently enrolled in school, have completed high school or its equivalent or be a veteran; and have no lawful status as of June 15, 2012. The program has enabled over 900,000 immigrants to stay in the U.S., go to school, and contribute to the economy through gainful employment." Drishti Pillai and Samantha Artiga, "2023 Update on Key Federal Immigration Policies and Implications for Health," Kaiser Family Foundation (Jan. 30, 2023).

[6] Misha E. Hill and Meg Wieh, "State & Local Tax Contributions of Young Undocumented Immigrants," Institute on Taxation and Economic Policy (Apr. 2017).

[7] Nicole Acevedo, "DACA Recipients in 12 States Pay Over $50 Million in Taxes, Report Says," NBC News, Sept. 12, 2019. The article cited a study by Nicole Prchal Svajlenka from the Center for American Progress, noting: "Just in California, DACA recipients pay $2.1 billion in federal taxes and $1 billion in local and state taxes to fund schools and health care for low-income residents."

attack — most recently by nine state attorneys general.[8] This article contrasts DACA's macroeconomic success and increased opportunities for young immigrants with the seemingly intractable political constraints to larger reform, urging increased innovative approaches to immigration reform.

The direct correlation between an aging population and fiscal constraints — or "shrinkonomics" — is perhaps best illustrated in Japan's steep economic contraction. Japan's industrialized, democratic society offers a viable analogue to the United States in terms of economic performance, global exposure, and even its use of quantitative easing to stem losses during global economic turbulence, like the 2008 recession and the COVID-19 pandemic.[9] A 2020 IMF report emphasized how Japan's aging population is affecting the country's economic output, threatening pension programs, and affecting monetary policy.[10] Japan's vanishing labor pool, coupled with the increased need for healthcare and related services for its aging population, demonstrates the immediate impact of reduced labor on wage-based income taxes. As noted by the IMF, "Japan's challenges are particularly severe, given that the entire baby-boom population is passing the 75-year milestone in just three years (starting in 2022 and ending in 2025) and the country's public debt as a share of GDP is already the highest in the world."[11]

In contrast to America's estimated 17.4 percent of foreign workers, Japan's imported labor force generally hovers in the low 2 percent range, although the country has increased efforts to recruit more foreign workers, largely hailing from other parts of Asia, along with attempts to boost the productivity of native, aging workers.[12]

Comparatively, immigration is a key facet that sets the U.S. economy apart from Japan's. Congressional Budget Office data project a U.S. population increase driven largely by immigration over the next 30 years, from 336 million in 2023 to 373 million in 2053.[13] The CBO estimates that by 2042 all population growth in the United States will be due to direct gains from net immigration.[14] Moreover, Department of Homeland Security data reflect that in 2021, 740,002 individuals gained legal permanent resident (LPR) status in the Unites States with over 85 percent of newly minted LPRs of legal working age.[15] While these projections and statistics portend good news for the nation's economy, America's immigration policies are undermining our nation's true potential in terms of economic output, national security, and social welfare. For example, in 2012, the year DACA was enacted, 45,086 asylees and 105,528 refugees obtained LPR status. By 2021, those numbers had dwindled to 20,550 and 35,847, respectively.[16]

The number of new arrivals in the United States each year vastly outweighs existing legal channels available to immigrants. The effects of severely restricted pathways to legal immigration include decreased wages, lower income tax revenues, and greater instability from a national security perspective as a larger undocumented population reduces accountability in terms of tracking potential bad actors, including those pursuing the increased profitability of human trafficking. DACA data reflect the benefits of legal pathways — boosting employment rates and wages, and decreasing incidents of wage theft by employers.[17] As noted by the Institute on Taxation and Economic Policy:

> About half of undocumented immigrants file income tax returns. They do this using Individual Taxpayer Identification

[8] Namely Alabama, Arkansas, Kansas, Louisiana, Mississippi, Nebraska, South Carolina, West Virginia, and Texas. *See* Supplemental Complaint, Case No. 1:18-cv-00068, filed Dec. 16, 2022, in the U.S. District Court for the Southern District of Texas, Brownsville Division.

[9] *See* Richard H. Clarida, "The United States, Japan, and the Global Economy," Board of Governors of the Federal Reserve System, Nov. 1, 2019; and Congressional Budget Office, "How the Federal Reserve's Quantitative Easing Affects the Federal Budget" (Sept. 2022).

[10] Gee Hee Hong and Todd Schneider, "Shrinkonomics: Lessons From Japan," International Monetary Fund (Mar. 2020).

[11] *Id.*

[12] Sophak Duong and Jae Young Lee, "Can Foreign Workers Be the Key to Unlock Japan's Labor Shortages?" ASEAN+3 Macroeconomic Research Office, June 4, 2019.

[13] Congressional Budget Office, "The Demographic Outlook: 2023 to 2053" (Jan. 24, 2023).

[14] *Id.*

[15] A total of 630,640 of the 740,002 individuals granted LPR status in 2021 were younger than 65 years old, and specifically from ages 15 to 64. The Fair Labor Standards Act sets the minimum age of employment at 14. *See* Department of Homeland Security, Office of Immigration Statistics, "2021 Yearbook of Immigration Statistics" (Nov. 2022); and U.S. Department of Labor, "Age Requirements."

[16] Department of Homeland Security, *supra* note 15.

[17] Hill and Wieh, *supra* note 6.

> Numbers (ITINs) in the absence of having valid Social Security numbers. Because DACA provides young immigrants with work authorization, recipients are subject to the same state and local personal income tax laws as all lawfully present workers. DACA recipients do have (temporary) Social Security numbers.
>
> The tax revenues generated by DACA recipients are further boosted by the fact that DACA status boosts employment rates and wages.[18]

The marginal value of labor affects economic markets and drives immigration. University of Pennsylvania law professor emeritus Howard F. Chang has long advocated for an economic analysis to justify more liberalized immigration. Specifically, Chang pointed to the marginal value of labor, noting that a worker immigrating to the United States is generally paid more for their labor here than in their homeland, and that "higher wages for the same worker mean that the worker produces more value in the country of immigration than in the country of emigration" — leading to an anticipated labor flow toward the country that will pay or value the labor the most.[19] Championing the economic incentives toward less restrictionist policies, DACA proponents note:

> If DACA expires without Congress passing a permanent solution for these individuals, states and localities collectively face a loss of almost $800 million in tax revenue . . . [I]f they lose work authorization, their income would drop, and more of it would be "off the books." On the other hand, if Congress provides a path to citizenship for these individuals, states and localities would see their revenue boosted by about $50 million.[20]

[18] *Id.*

[19] Howard F. Chang, "The Economics of Immigration Reform," 52 *U.C. Davis L. Rev.* 111, 114-115 (2018).

[20] *See* Kosten, *supra* note 4.

Despite the program's successes, DACA's application has been uneven. In late 2014, with over 600,000 original childhood arrivals approved for DACA, the program was expanded to allow additional arrivals and deferred action for parents of citizen children and LPRs.[21] This resulted in projections that there would be 2 million to 2.5 million people in receipt of deferred action by 2017.[22] Instead, the DACA program was subject to a September 5, 2017, rescission. This occurred despite the fact that — along with temporary protected status recipients — DACA holders collectively contributed over $5.5 billion in 2017 taxes and held over $25 billion in spending power.[23]

Because of eligibility limits, the pool of potential DACA applicants is decreasing. As of December 31, 2020, 636,000 undocumented youths were granted work visas and protected from deportation under DACA.[24] By September 30, 2022, that number had reportedly decreased to just over 589,000.[25] Nevertheless, the DACA population's low usage of social service programs, their inability to participate in the health insurance marketplace, their sizeable rates of entrepreneurship, and their low cost to law enforcement all yield significant net gains to the economy.[26] Ending DACA is projected by some to result in an economic contraction of $280 billion to $430 billion over a decade.[27] Additional concerns about losing DACA without a viable replacement note that "eliminating DACA is lose-lose-lose. The DACA population would lose about $120 billion in income, the federal government would lose roughly $72 billion in tax revenue, and states

[21] Congressional Budget Office, "How Changes in Immigration Policy Might Affect the Federal Budget" at 8 (Jan. 2015).

[22] *Id.*

[23] New American Economy Research Fund, *supra* note 3.

[24] Jens Manuel Krogstad and Ana Gonzalez-Barrera, "Key Facts About U.S. Immigration Policies and Biden's Proposed Changes," Pew Research Center (Jan. 11, 2022).

[25] Pillai and Artiga, *supra* note 5.

[26] New American Economic Research Fund, *supra* note 3. (One of the conditions of DACA status is to abide in the United States as lawfully as possible in terms of misdemeanor or felony convictions.)

[27] *Id.* (citing Ike Brannon and Logan Albright, "The Economic and Fiscal Impact of Repealing DACA," Cato Institute, Jan. 18, 2017); Silva Mathema, "Ending DACA Will Cost States Billions of Dollars," Center for American Progress, Jan. 9, 2017.

and local governments would lose about $15 billion in tax revenue over the 2020-29 decade."[28]

On June 18, 2020, approximately 700,000[29] DACA recipients were granted a brief reprieve regarding the fate of the DACA program following the U.S. Supreme Court's narrow determination that the 2017 rescission violated the Administrative Procedure Act and the rights of those covered under DACA.[30] Then-Attorney General Jeff Sessions was central in the original rescission, claiming the previous administration's "open-ended circumvention of immigration laws was an unconstitutional exercise of authority by the Executive Branch."[31] This claim of unlawful overreach of constitutional power was central in the Supreme Court case, with DACA proponents contending the argument was flawed and not based on the otherwise broad and discretionary presidential power to affect public policy.[32] The Court's 2020 ruling against the validity of the 2017 rescission did not change the fact that a congressional fix is needed to definitively address potential paths to legalization and citizenship for these childhood arrivals.

The Biden administration attempted codification through an October 31, 2022, rule, but it was blunted by ongoing litigation and a steady decrease in eligible applicants.[33] A related American Dream and Promise (DREAM) Act of 2021 also failed to gain traction in Congress.[34] If past is prologue, political polarization will continue, preventing meaningful immigration reform, including potential codification of DACA or similar legislation.[35] As I noted in my 2020 law review article, "Reframing Taxigration," tax compliance by undocumented immigrant workers could and should be the architectural centerpiece of immigration reform. DACA holders provide just one example of the net tax gains possible through increased opportunities for legalization. DACA illustrates how reframing discussions of immigration to focus on marked increases in national fiscal solvency through increased tax revenues should ideally generate the political goodwill necessary to aid the passage of meaningful immigration reform. While that has yet come to pass, it is due time to reframe our discussions of immigration reform through DACA's lens to aid the development of strategic, humane responses to the ongoing influx of new arrivals — and benefit the social and financial security of native citizens and society writ large.[36] ■

[28] Ike Brannon and M. Kevin McGee, "Estimating the Economic Impacts of DACA" (July 5, 2019). Following a 2020 DACA enrollment freeze, the authors wrote: "We project that over the 2021-30 decade, the youngest members of the DACA population would lose about $6.4 billion in income and productivity, the federal government would lose roughly $2.8 billion in tax revenue, and state and local governments would lose about $705 million in tax revenue . . . [and] losses would expand dramatically over time, to about $19.7 billion in lost income and productivity, $7.4 billion in lost federal tax revenue, and $2.0 billion in lost state and local tax revenues in the 2031-40 decade." Brannon and McGee, "The Costs of Closing DACA Initial Enrollments" (Oct. 20, 2020).

[29] *See* Michael D. Shear, Julie Hirschfeld Davis, and Adam Liptak, "How the Trump Administration Eroded Its Own Legal Case on DACA," *The New York Times*, updated Nov. 12, 2019.

[30] *See Regents of the University of California v. United States Department of Homeland Security*, 908 F.3d 476, 486, 492 (9th Cir. 2018). The Eastern District of New York and D.C. Circuit cases were consolidated and granted petition for writ of certiorari on June 28, 2019. *See United States Department of Homeland Security v. Regents of the University of California*, 139 S. Ct. 2779 (2019).

[31] Office of the Attorney General, Letter from Jeff Sessions to Acting DHS Secretary Elaine C. Duke.

[32] *See* Kevin J. Fandl, "How Far-Reaching Are the President's Powers on DACA?" WHYY.org, Oct. 17, 2017 (noting that while "Congress is the only entity in our government tasked with making laws . . . the president has a great deal of power in deciding how those laws are enforced").

[33] "Given the requirements to have entered the U.S. prior to June 15, 2007, and to be under the age of 31 as of June 15, 2012, the number of people who could be eligible for DACA is decreasing over time." Pillai and Artiga, *supra* note 5.

[34] *Id.*

[35] Camilo Montoya-Galvez, "Republican-Led States Ask Judge to Shut Down DACA Program for Immigrant 'Dreamers,'" CBS News, Jan. 31, 2023. "Unfortunately, our Congress has been polarized and unable to pass any major immigration reform legislation — and I think that's unlikely to happen in 2023," said Steve Yale-Loehr, a Cornell University professor who studies the U.S. immigration system. Yale-Loehr said the only way he sees the new Congress offering DACA beneficiaries permanent legal status is as part of a broader deal that includes measures limiting asylum along the U.S.-Mexico border to address concerns from Republican lawmakers, who hold a slim majority in the House.

[36] *See generally*, Jacqueline Laínez Flanagan, "Reframing Taxigration," 87 *Tenn. L. Rev.* 629 (2020).