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The Clock Is Not Ticking on DACA

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All of a sudden this week, Republicans are awfully impatient to get an immigration deal done. “This will be our last chance, there will never be another opportunity! March 5th,” tweeted President Donald Trump, referring to the day his executive order set the termination of the Deferred Action for Childhood Arrivals program. “The clock is ticking” warned Senate Majority Leader Mitch McConnell on the Senate floor. “It’s this week or not at all,” said Senate Majority Whip John Cornyn, “We need to get it wrapped up by Thursday.”

First of all: What a callous sentiment to express regarding the lives of hundreds of thousands of people who have been left in limbo for *years*.

Second, the seemingly coordinated statements are designed to put Democrats in a vise. The Republican demand is: Either accept a deal to save DACA on our terms, and give those 1.8 million undocumented immigrants eligible for the program a path to citizenship, or get nothing except blame for hanging the “DREAMers” out to dry.

But Democrats need not be suckers. They should see the Republican pressure tactics for what they are: an attempt to rush a deal that would lock in a slew of restrictions on future immigration while Democrats have the weakest amount of leverage.

There is only one way for Democrats to gain more leverage: Walk. Away.

Democrats are in this pickle because, if I may be so humble, they didn’t take my January advice to forgo a shutdown. While shutdowns are often advocated in the belief that taking the entire federal government hostage increases negotiating leverage, every time it happens the opposite proves true. The focus shifts from the issue at hand to the parks being closed and the soldiers going without pay. The instigators suffer public scorn for playing politics with people’s lives. They invariably cave, winning nothing for their troubles and turning political capital into ash.

Even before the shutdown ended, Democrats were already coughing up concessions. Senate Minority Leader Chuck Schumer offered Trump money for his signature border wall in exchange for DACA. Rep. Luis Gutiérrez, a stout defender of DREAMers who often criticizes Democratic leadership for not prioritizing immigration, completely capitulated on the wall, saying that for

DACA, “I’ll take a bucket, take bricks, and start building it myself. And he more broadly conceded, “We will dirty our hands in order for the Dreamers to have a clean future in America.”

After the shutdown ended, Trump called that bluff with his offer, piling on measures to stop the ability for citizens and green card holders to sponsor family members beyond spouses and minor offspring, and terminate the visa lottery program, which grants 50,000 visas a year to promote geographic diversity. Those proposals would restrict future *legal* immigration by 25 percent (the pro-immigration libertarian CATO Institute estimates the cut to be 44 percent).

Democrats and activists quickly moved their goal posts. Schumer publicly rescinded the wall offer and one immigrant advocate dubbed Trump’s proposal a “white supremacist ransom note.” But Democrats have already showed their cards, and are clearly still feeling the pressure. Just this week, independent-but-in-the-Democratic leadership Sen. Bernie Sanders told the Washington Post, “I would go much further than I think is right. Unwillingly. Unhappily. I think it’s a stupid thing to do. But we have to protect the DREAMers. . . . I’m willing to make some painful concessions.”

All the shutdown has done for Democrats to date is signal to Republicans: We will do almost anything to save the DREAMers. While that is a noble impulse, it is based on a faulty premise: that the DREAMers are in imminent danger.

There is no March 5 deadline as of today. In January, a federal district judge slapped an injunction on Trump’s executive order while legal challenges to it proceed. While Trump’s Justice Department is appealing the decision, it did not ask for an immediate stay. A second federal district judge this week echoed that decision. At this moment, DACA lives and is accepting applications for two-year permit renewals, though it is not taking new applicants.

How long will that injunction remain in place? That’s not clear yet, but it’s very possible it will remain for months, even years. This week the Supreme Court will decide whether it will take the case, and skip over the federal appellate court stage of the process, as the Justice Department has requested. That would be an unusual move for the Supreme Court to make, and since Justice did not ask for an emergency stay of the injunction, some court watchers believe the urgency does not exist for the Supreme Court to expedite the case. Even if the high court does take the case, it doesn’t have to consider it immediately. It could decide this term, which ends in June, or put it on the next term’s calendar.

As long as DACA is in place, there’s no pressure on Democrats to deal. And if Democrats have weak leverage today, they have every reason to play for more time.

Of course, it is also possible that the Supreme Court could lift the injunction. So could an appellate court if the Supreme Court passes on taking the case.

But if the injunction is scrapped, that’s the moment when Democrats can regain their lost leverage. Because if you clear away the bluster, all indications are that Trump and the Republicans are terrified, absolutely terrified, of having their fingerprints on the deportation of hundreds of thousands of sympathetic young people who grew up in this country and see themselves as Americans.

Cornyn, who this week heatedly delivered the Thursday ultimatum, was much more Zen back in December, when he said if Congress couldn't pass a bill by March 5, "then the president could extend the deadline if he chose to do so." (In fact, Cornyn had a different message one hour before his ultimatum, when he said, "We could do it this week if there is cooperation. If there is not, it might take longer.") If Trump did not push back the deadline, White House Chief of Staff John Kelly has insisted DREAMers would not be priorities for deportation, though they would lack work permits and would still be vulnerable to deportation.

And the only group of people Trump says nicer things about than DREAMers are coal miners, expressing his "love" for them and admitting, "Really we have no choice. We have to be able to do something." Last month, Trump said to those anxious about their status, "Tell them not to worry about it. We're going to solve the problem."

Obviously, Trump created the problem with his own executive order back in September. But the fact that he gave Congress six months for a legislative solution, and didn't try to stay the injunction that restored DACA for the time being, suggests Trump wants to have it both ways: Pander to his anti-immigrant base with a hardline policy without suffering the political backlash from following through.

Once the risk of the mass deportation of DREAMers really becomes real, the political equation changes. Instead of Democrats panicking that without concessions, they can't save the DREAMers, Republicans will be panicking they'll be on the hook for any cruel deportations. Sure, Republicans will try to blame Democrats for legislative intransigence, but Democrats don't run the Department of Homeland Security.

What should Democrats say to justify walking away from the table?

We support the DREAMers. We support border security. But we can't support a plan that slams the door shut on immigrants who want to come legally to be with their families and contribute to America's greatness. Donald Trump promised a "big beautiful door" for legal immigrants when he campaigned for president, and we intend to hold him to that.

Furthermore, why are Republicans suddenly so interested in rushing through a giant comprehensive bill? Back in 2013, after the Senate took months to pass bipartisan reform legislation, House Republicans killed it. The Speaker at the time said we shouldn't have a "single, massive ... bill," but rather "a step-by-step, common-sense approach to actually fix the problem."

Why not start with the one step we all agree on? Give the DREAMers a path to citizenship. There is no reason we can't do that and save the debates around family unification and the visa lottery for later.

If Republicans aren't prepared to do that today, we can wait for the courts. As of today, DACA is alive and eligible DREAMers should apply to renew their permits. If the legal picture changes, we will happily come back to the table to find a legislative solution.

It's terrible that DREAMers have been turned into political pawns, but that's on Trump. Democrats have to think about not only those currently in America, but also those in the future for whom America could be their lifeline. Immigration reform laws tend to last a long time, as it is a perpetually divisive subject that legislators are loath to touch. To hastily and unnecessarily let Trump end a 50-year era when America welcomed immigrants would be a calamity.

The truth is: The clock is not ticking. We don't have to wrap by Thursday. There will be another opportunity. Republicans are creating an artificial sense of urgency to escape a mess of their own making. Democrats should not repeat their own mistake of the shutdown and rush into a bad deal. Now is the time to wait.