



## The Data on DACA and Crime

Lori Robertson

November 14, 2019

Hours before the Supreme Court heard oral arguments over whether the Trump administration could end a deferred deportation program for so-called “Dreamers,” the president tweeted that “some” of those receiving that protection “are very tough, hardened criminals.” But certain criminal activity, such as a felony or significant misdemeanor conviction, is grounds for denial or ejection from the program.

The application and renewal processes, which include background checks, are designed to prohibit “hardened criminals” from participating in the program.

As we’ve explained before, the Deferred Action for Childhood Arrivals program — or DACA — was created in 2012 by then-President Barack Obama. It provides a two-year reprieve from deportation proceedings, as well as work authorization, with the opportunity for renewal, for qualified individuals who were brought to the United States illegally when they were children.

On Sept. 5, 2017, the Trump administration announced it would slowly end the program, and now, the Supreme Court is considering legal challenges to that decision. Oral arguments were held Nov. 12.

That morning, President Donald Trump tweeted: “Many of the people in DACA, no longer very young, are far from ‘angels.’ Some are very tough, hardened criminals.”

DACA applicants have to meet several eligibility criteria, including not having been convicted of a felony, significant misdemeanor or three or more other misdemeanors.

“People with convictions for serious crimes are prohibited from participating in the DACA initiative,” Jorge Loweree, the policy director at the American Immigration Council, a pro-immigrant advocacy group, told us. Loweree has worked with many DACA recipients and organizations providing services to them in his career. “They must also apply to renew their protections every two years, and they are subjected to comprehensive background checks by the Department of Homeland Security throughout the process.”

U.S. Citizenship and Immigration Services data indicate that some who have gained approval have had that status revoked due to criminal activity. The percentage is less than 0.5%.

According to USCIS, 2,130 DACA recipients from fiscal year 2013 through 2017 had their eligibility terminated due to criminal or gang activity, with nearly all of those terminations — 2,030 — due to criminal arrests or convictions not related to gang activity. Through fiscal 2017, there were a total of 798,980 DACA application approvals.

Other USCIS data show that of 770,628 DACA application approvals from 2012 to early 2018, 53,792 approvals had a prior arrest or apprehension, and 7,814 had a subsequent arrest or apprehension, though we don't know if those arrested were ultimately charged or convicted. The majority of the prior offenses were related to driving (but not driving under the influence) and immigration. The arrest rate for U.S. adults overall is actually much higher.

We'll go through the numbers.

### **DACA Eligibility**

In order to get DACA protection from deportation, applicants must meet several eligibility criteria. They must be:

- At least 15 years old when applying but under the age of 31 as of June 15, 2012;
- Under the age of 16 when entering the United States;
- Living in the U.S. continuously since June 15, 2007;
- Present in the U.S. on June 15, 2012, and at the time of applying;
- In school or have graduated or completed high school, or have been honorably discharged from the military;
- Not convicted of a felony, a significant misdemeanor or three or more other misdemeanors.

DACA applicants also can't "otherwise pose a threat to national security or public safety," according to USCIS.

Along with the application and supporting documentation, DACA applicants pay a \$495 fee, and then, if USCIS finds everything in order, applicants get an in-person appointment to provide biometric data, including fingerprints. USCIS also conducts background checks.

On those disqualifying convictions, USCIS explains that a felony "is a federal, state or local criminal offense punishable by imprisonment for a term exceeding one year." So, anyone who has served a jail term of more than one year for a criminal offense is ineligible for DACA.

That's also the case for those convicted of a "significant misdemeanor," which includes sentences of one year or less for offenses of "domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence"; as well as offenses "for which the individual was sentenced to time in custody of more than 90 days."

Three or more other misdemeanors also make applicants ineligible if they are "not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct."

And even if an applicant's criminal record doesn't meet any of those disqualifying criteria, USCIS can deny an application because it determines the applicant is "a threat to national security or public safety."

A USCIS spokesperson told us: “Generally speaking, USCIS terminates DACA — or does not approve a grant of DACA — when a DACA recipient commits a disqualifying criminal offense or is deemed a threat to public safety or national security.”

There are certain offenses — such as minor traffic violations — that would not disqualify someone from DACA, and successful applicants could be *arrested* for a more serious crime but not charged and convicted of it.

### **USCIS Report on Arrests**

That brings us to a June 2018 report issued by USCIS on arrests and apprehensions of DACA applicants for criminal or immigration-related civil offenses. The report says that of 770,628 approved DACA applications from 2012 to 2018, 53,792 had a prior arrest or apprehension, and 7,814 had a later arrest or apprehension, after approval and before renewal. Among 66,863 applications that were denied in that time period, 20,694 had a prior arrest or apprehension, and 1,010 had a later arrest or apprehension after the denial.

Trump referred to this report in another Nov. 12 tweet.

The report notes repeatedly that these are arrests, not convictions or charges. “An arrest indicates the individual was arrested or apprehended only and does not mean the individual was convicted of a crime. Further, individuals may not have been charged with a crime resulting from the arrest, may have had their charges reduced or dismissed entirely, or may have been acquitted of any charges,” the USCIS report said.

Jessica Bolter, an associate policy analyst with the Migration Policy Institute, a nonpartisan research group, highlighted that same language from the report, telling us: “These people were not even necessarily charged.”

The arrest-and-apprehension figures still may seem high to some, but not when considering the much higher arrest-only rate of the U.S. adult population overall.

Alex Nowrasteh, director of immigration studies at the libertarian Cato Institute’s Center for Global Liberty and Prosperity, wrote about the USCIS report shortly after it was released in 2018. He said the report “does not provide the comparable arrest rates for other populations, giving the false impression that that is a high number of arrests for such a small population.”

And it isn’t, Nowrasteh said. The report shows nearly 7% of DACA approvals had a prior arrest or apprehension. “Some social scientists estimate that about 30 percent of adults in the United States have an arrest record, so by that measure that have an arrest rate 78 percent below the average,” Nowrasteh wrote.

The Wall Street Journal and our fact-checking colleagues at PolitiFact.com have both written about the nearly 30% arrest rate figure for U.S. adults, which comes from FBI data. That includes arrests on felony charges and misdemeanors “if a state agency asks the bureau to keep it on file,” PolitiFact said. Again, those are for arrests, not convictions or even cases where charges are ultimately filed.

The USCIS report includes a chart that details the type of offenses for the prior arrests of approved DACA applicants. Most of those arrests are for driving violations (but not driving under the influence, the report said) and immigration offenses. Among the 53,792 with a prior

arrest or apprehension, 38.9% of them concerned a driving-related offense and 22.05% were immigration-related, both civil and criminal offenses.

But the list includes several more serious offenses, including 10 approvals with a prior arrest for murder, 15 for “gang” (with no further explanation of the exact offense) and 31 for rape (which includes attempted rape).

So, what might have happened in those murder arrest cases? There is no additional information in the report.

[S]omeone who had been convicted of murder would not be eligible for DACA,” Bolter, the Migration Policy Institute policy analyst, said in an email. “USCIS does reserve the right to exercise discretion in ‘exceptional circumstances’ but I have a hard time coming up with exceptional circumstances that would cause them to grant DACA to someone convicted of murder.”

The USCIS report said that 89.2% of DACA applicants who were approved had zero arrests or apprehensions; 2.2% had more than one arrest or apprehension. And 24 people had more than 10 arrests or apprehensions, the report said. There’s no further information on what those cases entailed.

Loweree, at the American Immigration Council, told us that in his experience, someone convicted of a serious crime would not be allowed to participate in DACA. There is some back-and-forth between USCIS and the applicant, he noted, saying that the agency often requests further information, which it would likely do regarding an arrest.

If someone were arrested for murder, as the USCIS report indicates, and ultimately approved the “only logical conclusion is that those charges were ultimately dismissed,” he said.

The most relevant statistics for the president’s tweet are USCIS’ figures on the 2,130 DACA recipients from fiscal year 2013 through 2017 who had their eligibility terminated due to criminal or gang activity. That’s less than 0.5% of the 798,980 DACA approvals through fiscal 2017. We don’t know the details on those arrests or convictions either, but we know the activity led USCIS to revoke the DACA protection.

“Terminations related to criminal activity are at various stages of the criminal process – from arrest to conviction – and involve a range of offenses from an accumulation of three nonsignificant misdemeanor convictions to very serious offenses such as murder, rape, and drug offenses,” USCIS [says](#) below the chart on that data.

### **Age of DACA Recipients**

Trump also commented on the age of DACA recipients, saying “many” are “no longer very young.” As we said earlier, those applying had to be at least 15 years old but younger than 31 as of June 15, 2012. It’s now seven years past that date, so some DACA recipients who renewed their status are in their late 30s at this point.

USCIS data [show](#) that the median age of active DACA recipients as of June 30, 2019, was 25 years old. The vast majority — 82.3% — are still under 31. But 98,060 (14.8%) are between 31 and 35, and 18,640 (2.8%) are between the ages of 36 and 38.

The president's tweet leaves the false impression that "hardened criminals" are approved for DACA protections. Government data show that a very small percentage of DACA recipients have had their protections revoked due to criminal activity.