



DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

Frequently Asked Questions UPDATED

May 2018

Recent government announcements and court cases on DACA have created confusion around who can apply, when they can apply, and how they can apply for DACA. To mitigate this confusion, below is an informational FAQ for your reference. Please note that lawsuits regarding DACA are still pending in the courts, and information is changing.¹ For now, the DACA program is still partially available and will continue according to the U.S. Citizenship and Immigration Services (USCIS) guidelines issued in January 2018.²

Although in April 2018 a federal judge opened the possibility of USCIS accepting DACA initial requests, it is not yet official. Currently, **NO DACA INITIAL REQUESTS** are being accepted from individuals who have never applied. **ONLY DACA RENEWALS** are being accepted by USCIS (from anyone who ever had an approved DACA request). Please continue to visit the ILRC website at <https://www.ilrc.org/daca> for updates.

Is it true that the government is now accepting DACA initial requests?

No. NO INITIAL REQUESTS are being accepted at the moment. Only DACA renewal requests are currently being accepted.

On April 24, 2018 a federal judge issued a decision that could reinstate the DACA program to order USCIS to once again accept first-time requests from individuals. However, the federal judge has paused this order for 90 days to allow the government time to explain why DACA should be terminated. This means that **in the next several weeks, there may be a response or new DACA memorandum from the government.** Make sure to keep on top of developments in this case. It is called *NAACP v. Trump*.

Earlier this year, two other federal judges restarted the DACA renewal program for those who have or previously had DACA. The government has appealed those decisions, and it is expected that a Circuit Court will issue a decision in the coming months. Until a decision is made, USCIS will continue to accept requests for DACA renewals and it is encouraged that DACA holders apply for a renewal as soon as possible.

For an overview timeline of the different decisions impacting the DACA program, see <https://www.ilrc.org/daca-timeline-infographic>.

I think I may be eligible for DACA, but I never applied. Can I apply now?

No. At least not yet. Even if the government does not respond to the federal judge's decision, initial DACA requests will not be accepted for at least **90 days**. If the government takes 90 days to respond, even if the judge decides to order USCIS to accept initial DACA requests again, that would not be until July 23, 2018 or later.

There are a number of ways the government could respond within the 90 days to the federal judge's decision to reinstate the DACA program. It is hard to predict the timing or potential outcomes.

¹ On April 24, 2018, a Federal court issued a decision allowing for DACA initial requests. Though the decision opened the possibility, the Judge stayed the order for 90 days to give the government an opportunity to submit new evidence. To date, the DACA lawsuits continue to evolve, for more details on the cases, please visit the National Immigration Law Center page on DACA lawsuits challenging the termination at <https://www.nilc.org/issues/daca/cases-challenging-daca-program-termination/>.

² The USCIS guidelines issued in January, 2018 is available at <https://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction>.

How can I remain informed about changes to the DACA program?

It is important to access information from a trusted source. In light of all the changes to DACA, there is a lot of confusion and some sources of information can potentially give misinformation about when a person is eligible to apply. Some of the sites you can visit for up to date information are:

- ILRC at <https://www.ilrc.org/daca>
- National Immigration Law Center at <https://www.nilc.org/>
- The United We Dream website at <https://unitedwedream.org/>

These sites will continue to update their information around DACA as the lawsuits evolve.

What can I do in the mean time?

All individuals should go get an immigration consultation or screening as soon as possible. It is uncertain what will happen with the recent federal judge's decision or in the pending lawsuits, and it is important that you know what your options are. This will help you know if you would be eligible for DACA (in case initial requests are accepted again) or if you are eligible for another immigration option to get a visa or green card.

Where can I find a list of free or low-cost immigration legal service providers?

To locate trusted immigration legal service providers in your area, visit the National Immigration Legal Services Directory page at: <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>. There you will find a list of service providers that can assist you with an immigration screening and/or your DACA renewal request. Please note that if you need assistance paying an immigration application, you can visit www.ic4daca.org to apply for 0% interest loan.

Who is eligible to apply for DACA now?

Any individual who has DACA or was previously granted DACA can request a renewal. This means that you can request to renew your DACA if you:

- currently hold DACA;
- had DACA but it expired, or
- had DACA but it was terminated by USCIS or ICE.

If you never applied for DACA or you applied for DACA, but it was not approved, you are not eligible for DACA at this time. USCIS will not approve DACA for you now.

If your DACA was previously terminated by USCIS or ICE, speak with an immigration expert before filing your DACA renewal request. The reasons your DACA was terminated previously may impact your eligibility for or likelihood of having a DACA renewal approved now. If your DACA was terminated based on arrests, unproven allegations or a low offense that should not disqualify you from DACA, and the government did not send you a notice or an explanation, then the government may have terminated your DACA unlawfully.³ If that is the case, you may be able to have your DACA reinstated. If you think this may be your situation, you can contact the American Civil Liberties Union (ACLU) at DACArevoked@aclu.org.

³ You can read about the recent court case impacting DACA recipients whose DACA was terminated at <https://www.aclu.org/cases/inland-empire-immigrant-youth-collective-v-nielsen>.

When can I file my DACA renewal request? Is it true I can only submit a renewal request if my DACA expiration date is less than 150 days away?

Although USCIS encourages DACA recipients to file a renewal request between 150-120 days before their current DACA expires, USCIS is accepting renewal requests filed earlier than the 150 days. These renewal requests have been accepted and receipt notices have been issued.

Some individuals have filed a renewal request up to one year in advance to ensure that their request gets reviewed now that the DACA program has restarted and in case the program gets rescinded again. Please note that if you do choose to renew in advance, an approval of a DACA renewal may overlap with your current DACA. With that said, you should talk to a trusted legal representative before you submit your DACA renewal request to ensure you are still eligible for DACA and to check for any red flags with your request.

What do I have to submit to renew my DACA?

To renew your DACA you will need to submit immigration forms I-821D, I-765, I-765WS, a copy of your work permit, and the \$495 filing fee.

Special instructions for Form I-821D:

1. If your DACA is still current (*has not expired at the time you submit your DACA renewal request*), check this box in Part 1 and write your DACA expiration date:

2. **Renewal Request** - Consideration of Deferred Action for Childhood Arrivals

AND

For this Renewal request, my most recent period of Deferred Action for Childhood Arrivals expires on

(mm/dd/yyyy) ►

2. If your DACA expired on or after September 5, 2016 (*this means from September 5, 2016 to now*), check this box in Part 1 and write your DACA expiration date:

2. **Renewal Request** - Consideration of Deferred Action for Childhood Arrivals

AND

For this Renewal request, my most recent period of Deferred Action for Childhood Arrivals expires on

(mm/dd/yyyy) ►

3. If your DACA expired on or before September 5, 2016 (*this means anytime before September 5, 2016, like September 4th or September 3rd of 2016 or before*), check this box in Part 1 and write your DACA expiration date:

1. **Initial Request** - Consideration of Deferred Action for Childhood Arrivals

AND

For this Renewal request, my most recent period of Deferred
Action for Childhood Arrivals expires on

(mm/dd/yyyy) ▶

Note: If your DACA expired on or before September 5, 2016, you will need to submit documentation of your education, physical presence on June 15, 2012, and continuous presence from June 15, 2007 to present.

Should I request to renew my DACA if I have a new crime in my record?

If you have been arrested or convicted of a new crime, it is important that you speak with an immigration expert before you submit a DACA renewal request. Due to changes in the government's immigration enforcement priorities as of January 2017, it is best to speak with an immigration expert before applying even in the cases where the incident happened before your last approval. Some DACA recipients with criminal issues have had their DACA renewal requests denied in cases that would have previously been approved.

What if I lost my work permit, should I renew my DACA or apply to replace my work permit?

Whether you choose to submit a DACA renewal request, or a work permit replacement request is going to depend on when your DACA permit expires. If it expires in a few months or so, it makes sense to submit a renewal since you must pay the \$495 fee, and if approved you will get a work permit for two more years. If you file a Form I-765 for a work permit replacement, you will still need to pay the \$495 fee and will have to file a DACA renewal request in a few months and pay the fee again.

How long are approvals for DACA requests taking?

There is no definite answer to how long it will take for USCIS to review your request. USCIS has stated that they will attempt to process DACA renewals within 120 days of receiving the request. Despite this policy, DACA requests have been reviewed and approved in less time (some as quickly as three weeks) or taken as long as six months or more. Requestors should receive a receipt notice and biometrics appointment within a few weeks of submitting their request.

To ensure your DACA request gets processed in a timely manner, please make sure to not miss your biometrics appointment and ensure you submit a complete request (no missing forms, no missing information, all forms signed in all of the required places, and completely answered Part 4 of the Form I-821D). Note that if your request has been pending for 105 days, you can submit an inquiry with USCIS by calling 1-800-375-5283 and giving them your receipt notice information.

If my request is missing information, will USCIS reject my request or will they ask for more evidence?

Recently, USCIS has rejected DACA renewal requests for not being properly filed when information is missing from Form I-821D or Form I-765. Some USCIS service centers have previously issued a Request for More Evidence (RFE) for the type of missing information, allowing applicants to respond within a given period before USCIS continued their review. Some of the reasons USCIS rejected requests included missing an answer to a question in Part 4 of Form I-821D, missing date of birth, missing a signature, or missing a page

of one of the immigration forms. USCIS stated that these requests were not properly filed, and they had a valid reason to reject.

Taking this into account, it is important that the request you submit is complete. This means all applicable boxes are checked, all information is provided, the exact fee is submitted, all signatures are included, and all immigration form pages are included.

Can I still travel on advance parole with my DACA?

No. USCIS is no longer accepting requests for advance parole for DACA recipients. Recent court orders that restarted the DACA program only ordered USCIS to open the acceptance of DACA renewals, but they did not restart advance parole for DACA recipients.

There are cases where individuals are still traveling on advance parole, but all these permits were given prior to the September 5, 2017 announcement that rescinded the DACA program. Please note that even if you were granted advance parole prior to the announcement, there is always a risk to traveling outside the United States, and you need to speak with an immigration attorney before you make the decision to leave the country.

What can I do if I encounter immigration enforcement officers?

Everyone, regardless of status, has certain rights under the United States Constitution. It does not matter if you are a citizen, legal permanent resident, or undocumented. This means you have a right to:

- not open your door to officers, unless they can show you a warrant signed by a judge
- remain silent and not have to answer any questions
- speak to an attorney, and
- not sign any document

It is important that you exercise your rights if you encounter immigration enforcement. Exercising these rights can make a big difference in your case. You can find a copy of a red card, outlining these rights, in different languages at <https://www.ilrc.org/red-cards>.