

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA): FREQUENTLY ASKED QUESTIONS

Prepared by the National Immigration Law Center and the Immigrant Legal Resource Center

On December 4, 2020, the U.S. District Court for the Eastern District of New York vacated the July 2020 DHS Memo and restored the Deferred Action for Childhood Arrivals (DACA) program to its original 2012 form. This means that the Department of Homeland Security (DHS) must now accept first-time requests and renewal requests for DACA as well as Advance Parole requests from eligible DACA recipients. Additionally, individuals who received one-year DACA protections have had their DACA protections and work authorizations automatically extended to two-years.

Note that this resource is not meant to serve as legal advice. All individuals who want to understand how the court's orders and DHS' actions impact them should speak with a trusted legal service provider. The status of the DACA program has been rapidly changing and individuals should continue to visit this page for updated resources. Additionally, we encourage you to visit class counsel's website (www.dacaclassaction.org), and U.S. Citizenship and Immigration Services' (USCIS) webpage regularly.

1) Why was this Court order possible?

The court's December 4th order is part of a series of wins against the Trump administration's on-going efforts to dismantle DACA. While the U.S. Supreme Court's decision on June 18, 2020 should have resulted in the restoration of the DACA program in its entirety, DHS instead issued a new memo on July 28, 2020 (the "Wolf Memo") that severely curtailed DACA once again. Plaintiffs in the *Batalla Vidal* lawsuit quickly amended their complaint to challenge this new memo and on November 14, 2020, the district court ruled that the memo had been unlawfully issued because Chad Wolf was not properly serving as Acting Secretary of the Department of Homeland Security and thus lacked legal authority to issue the memo. The court's subsequent December 4, 2020 ruling then ordered that the Wolf Memo be set aside and ordered the federal government to undertake additional steps.

Additionally, the court's November 14th opinion also certified a nationwide class consisting of all individuals who are or will become eligible for DACA based on the terms of the original 2012 DACA program. The class excludes few individuals who choose to bring their own federal lawsuit challenging the Wolf Memo. Individuals do not need to take any additional steps to be part of the class – under the court's order, anyone who fits the class definition is automatically part of the class. The National Immigration Law Center, the Jerome N. Frank Legal Services Organization at Yale Law School and Make the Road New York were appointed class counsel. Class members and their attorneys can find additional information and sign up to receive email updates from class counsel at www.dacaclassaction.org.

2) What is DACA?

DACA is a policy fought for by immigrant youth and created by the Obama Administration in 2012 to protect from deportation certain undocumented individuals who came to the United States as children. In addition to protection from deportation, DACA recipients are eligible for work authorization, a social security number, and, through state laws, a state-issued identification or driver's licenses. DACA does not grant lawful status such as a visa or green card, nor does it offer a pathway to U.S. citizenship.

3) What is the status of the DACA program today?

As of December 4, 2020, DACA was fully restored to its pre-September 2017 status, meaning that the 2012 Napolitano Memo establishing DACA is the governing policy. DACA has since been open for initial requests and for renewal requests from individuals who have previously had DACA. Any individual granted DACA will be approved for a period of two years. Additionally, DACA recipients can again request Advance Parole for education, employment, and humanitarian reasons.

4) I have heard that there is a DACA class action lawsuit. What does that mean?

If you are or will be eligible for deferred action under the terms of the 2012 DACA memorandum that created DACA, you are a class member in the *Batalla Vidal v. Wolf* lawsuit that is before a federal district court in New York.¹ You do not need to take any other action to be part of the class. Being a class member means that you can benefit from all the relief ordered by the court in the case. For example, because the case has been certified as a class action, individuals can submit first time requests for DACA, no matter where in the country they live and even though they are not named plaintiffs in the lawsuit. The National Immigration Law Center, the Jerome N. Frank Legal Services Organization at Yale Law School and Make the Road New York have been appointed lawyers representing the class in the lawsuit. You can learn more information and sign up for email updates at dacaclassaction.org.

5) Can I apply for DACA for the first time?

Yes, individuals who are eligible for DACA can submit a request for DACA. You do not need to have been granted DACA in the past to submit your application to USCIS for processing. Individuals who are interested in applying for DACA should consult an immigration attorney or DOJ accredited representative before filing an application to make sure they are eligible for the program and to be thoroughly screened.

6) If I currently have DACA, can I still renew? When should I file for renewal?

Yes, all individuals who have DACA now or had DACA in the past can still renew. USCIS recommends that individuals submit DACA renewal requests between 150 to 120 days (5 to 4 months) before their current DACA expires. Despite this, USCIS should accept filings submitted earlier than the 150 days from expiration.

7) Can I apply for Advance Parole?

Per the December 4, 2020 order, Advance Parole is available again to DACA recipients according to the terms that were in place for Advance Parole before September 5, 2017. Individuals interested in applying for

¹ Only a handful of people – who have brought their own federal lawsuit to challenge the Wolf Memo – are excluded from the class.

Advance Parole need to demonstrate that their need to travel is for “humanitarian, education, or employment” purposes. Some examples of this can include travel to visit a sick family member, to study abroad, or to complete an overseas assignment for a job.

If you are interested in applying for advance parole to travel abroad, speak with an immigration attorney or a DOJ accredited representative before applying and again before you travel outside the United States even if you have been granted advance parole.

8) What if I recently submitted a DACA renewal request, how does the December order affect me?

According to the order, all requests for DACA that were pending at USCIS as of December 4, 2020, will be adjudicated under the pre-September 2017 guidance. If you have a renewal application pending or if you recently mailed a renewal application and the application is granted, you should receive a two-year grant of deferred action and work authorization.

9) I was issued a one-year work authorization and DACA grant, how does this order affect me?

All work authorizations and DACA grants that were issued for one year have been automatically extended to two-years. On December 10, 2020, the court ordered that the government mail a notice to the individuals who received a one-year employment authorization card (EAD) because of the Wolf Memo. If you received a one-year grant of DACA instead of two-years, USCIS will mail you a notice by January 8, 2021, that can be used in conjunction with your one-year EAD as proof that you have been granted work authorization for two-years. USCIS will also mail you a new EAD for the second year of your work authorization at least 30 days before your current one-year EAD expires.

10) I submitted a first-time application for DACA, and it got rejected, how does this order affect me?

Applicants who previously submitted first-time DACA applications but had them rejected due to the Wolf Memo can apply for DACA now. USCIS will also mail these individuals a notice by January 8, 2021. However, individuals do NOT need to wait to receive the notice before applying. Applicants should speak with an immigration attorney or a DOJ accredited representative to discuss next steps and to discuss the particularities in their individual case if they have not already.

11) What will happen if I submitted an application for Advance Parole before this announcement?

Applicants who previously submitted advance parole applications but had them rejected due to the Wolf Memo are able to re-apply for DACA-related advance parole now and their applications will be assessed in accordance with the pre-September 2017 DACA guidance. USCIS will mail these individuals a notice by January 8, 2021. However, individuals do NOT need to wait to receive the notice before applying. You should speak to an immigration attorney or a DOJ-accredited representative before applying or reapplying for advance parole. Please see question 7 above. Applicants who applied for Advance Parole and whose applications are still pending do not need to take any steps. Your applications will be processed according to the pre-September 2017 terms.

12) What should I consider before I apply for DACA?

Individuals seeking DACA should keep in mind that DACA does not provide a path to permanent residence or U.S. citizenship and is subject to change. While the program has been reinstated and the next administration has shown support for DACA, it is important to note that the current administration may try again to terminate the program, that the legality of DACA is currently being challenged in a lawsuit brought by Texas and other states and that the court hearing that case could rule in the next couple months, and that DACA is a temporary program that can be altered. Those interested in applying for the first-time or renewing should speak with an immigration attorney or DOJ accredited representative to receive a complete consultation.

The risks associated with filing a DACA application will depend on an individual's personal facts.

13) Will USCIS use my information, even if my request was rejected?

The information you provide in a DACA application should be protected for purposes of immigration enforcement unless you are considered a national security threat, have committed fraud in the DACA application, or have committed a serious criminal offense. However, documents obtained through a lawsuit revealed that ICE appears to be able to access USCIS data. You should speak to an immigration attorney or a DOJ accredited representative to receive an individualized assessment of any impact on your case.

14) Will DACA be terminated?

We do not know what will come next for the DACA program, but it is important to remember that DACA could still be terminated. DACA is an immigration policy created through executive action. This means that the program can be changed again by current or future administrations if they do so lawfully.

It is also important to note that while the program was reinstated, there is another case challenging the legality of DACA in Texas that could result in a termination of the program. We should know more information regarding this case later this month.

As we move forward, we must advocate to ask for a more permanent solution for DACA and TPS recipients as well as all undocumented individuals in the United States.

15) Who can help me complete a DACA application or give me some advice on my case?

It is strongly recommended to speak with an immigration attorney or DOJ accredited representative for an individual assessment before submitting an initial or renewal DACA application. Furthermore, since DACA does not provide a pathway to citizenship or lawful immigration status, it is also advisable to get a full legal screening to understand potential eligibility for other forms of immigration relief. All undocumented individuals, whether they have DACA or not, should speak to a legal service provider to be oriented about their legal options.

Only immigration attorneys or DOJ accredited representatives can give legal advice on immigration issues. Unfortunately, there has been an upsurge of immigration fraud in our communities where unqualified individuals are giving immigration advice. Please remember that submitting any immigration application without expert assistance can be highly risky. Visit bit.ly/ianimmhelp or <https://www.informedimmigrant.com/service-organization-search/> to find a trusted legal service provider in your area.

16) What are some demands people can make to lawmakers to protect immigrant communities?

We must continue to demand that state and local officials protect all immigrant communities, not just DACA recipients, from immigration enforcement. We must also advocate for inclusive federal legislation that provides a pathway to citizenship. Any policies that further harm, criminalize, or deport immigrant community members must be rejected.

Additionally, because we are living through a pandemic and an economic crisis, we have to insist that the government in future COVID-19 relief packages extend protections and resources to immigrants who put their lives at risk to ensure this country continues to operate.