



DACA: CURRENT STATUS AND OPTIONS

By ILRC Staff Attorneys

Original 2012 Deferred Action for Childhood Arrivals (DACA) remains in place and available to qualified applicants, and USCIS continues to accept and approve DACA initial and renewal applications. However, DACA is under attack and its future is once again uncertain. Ten states recently issued a letter to the Trump administration threatening to sue if DACA is not terminated by September 5, 2017. It is unclear what might become of this threat, but DACA recipients and those eligible to apply should follow events closely for updates.

I. Current DACA Recipients – Stay Calm and Stay Out of Trouble

DACA continues to provide recipients with work authorization and other benefits. However, even if you have DACA, immigration authorities may detain you and terminate your DACA if you, after receiving DACA:

- are **arrested or convicted** for any criminal offense (including traffic offenses);
- **commit or admit to any criminal offense**;
- admit to **fraud** in connection with a government agency (such as use of a false social security number);
- admit to being **part of a gang** now or in the past; or
- are determined to pose a **threat** to public safety or national security.

According to the federal government, if you disclosed the above information in previous DACA applications and your case was approved, you will continue to hold DACA. If you failed to disclose any criminal history in your application or experience new criminal issues *after* receiving DACA, you should speak to an attorney as you may be at risk.

***TIP:** When possible, you should carry copies of proof you hold DACA, including photocopies of your work permit and the notice the government provided when it approved your DACA (a piece of paper titled “Form I-797C, Notice of Action”). Immigration officers are not supposed to arrest, detain, or deport you if you can prove you currently hold DACA, but it is not guaranteed.*

II. Initial DACA Applications – Recommended Only With Attorney Representation

Applying for DACA for the first time presents both benefits and risks. You should only apply after consulting with an attorney and considering the risks and benefits of your case. Be sure to have an attorney or BIA accredited representative help you prepare your application.

Prior criminal, immigration, fraud or gang issues could be particularly risky. Be sure to consult an expert before applying if you have:

- previous **criminal arrests or charges** (even without a conviction);
- **any type of criminal conviction** (including either misdemeanors or felonies);
- any history of **fraud related to a government agency** (such as **use of a false social security number**); or
- been **deported** or been ordered deported from the United States before.

Initial applications will likely take up to six months or more to be processed. If an initial application is not approved before the DACA program is changed or terminated, you may lose your \$495 application fee. Furthermore, you risk exposure to immigration authorities by sending them your personal data. If pending federal legislation (the BRIDGE Act) passes to replace DACA, you may be eligible for another, less risky opportunity to be protected from deportation and receive a work permit.

III. **DACA Renewals – Recommended for Certain Applicants**

If you currently have DACA and want to renew it, you should apply for renewal five months before your current DACA expires. To understand the current risks and benefits of renewing DACA, consult with an experienced immigration attorney or accredited representative.

DACA renewal applications are still being accepted and approved which means you may receive a new work permit valid for another two years. The main risk is that the DACA program could be changed or terminated suddenly. If your renewal application is not approved before the program is terminated, you may lose the \$495 application fee.

If you have **any prior or new immigration or criminal issues**, do not apply to renew your DACA until you **first consult with a trusted legal service provider** to assess your case. Some past criminal or immigration issues could impact your renewal application now even if you were approved for DACA in the past.

You may qualify for a loan or other help with the application costs. Check out Mission Asset Fund if you're in the Bay Area (<http://missionassetfund.org/lending-circles-for-dreamers/>), Self-Help Federal Credit Union (<http://www.self-helpfcu.org/personal/loans/immigration-loans>), your nearest Mexican Consulates, or local DACA service providers for information.

IV. **Advance Parole – Not Recommended**

Do not apply for or travel under advance parole through DACA at this time.

If you have already been approved for travel outside the United States with advance parole or you need to request emergency advance parole (in person at a USCIS office), do so only after consultation with an experienced immigration attorney or accredited representative.

You **SHOULD NOT** travel with advance parole of any type if you have:

- previous **criminal arrests or charges** (even without a conviction);
- **any type of criminal conviction** (including either misdemeanors or felonies);
- any history of **fraud related to a government agency** (such as **use of a false social security number**); or
- been **deported** or been ordered deported from the United States before.

V. **STEPS TO FOLLOW**

Consult with an experienced immigration attorney or accredited representative to understand your legal options and if you might be eligible for a safer, more permanent immigration benefit.

- Find low-cost immigration legal services: <https://www.immigrationlawhelp.org>.

Avoid fraudulent service providers: confirm their credentials, ask for a written contract and a receipt for any payments, and if you have doubts, get a second opinion.

- For more information, go to: <https://www.ilrc.org/anti-fraud-flyers>.

Avoid negative contact with law enforcement. Any arrest, charge, or conviction, especially related to gangs, drugs or a DUI can be really bad for your immigration situation.

If you have a criminal record, consult an expert. Certain convictions can be changed to lessen the impact on a future immigration case you may have.

VI. KNOW YOUR RIGHTS

Everyone, regardless of their status, has constitutional rights before the immigration authorities.

Remain Silent

- Don't respond to the questions of an immigration agent or provide any personal information. They may continue to ask you in a forceful, harassing or intimidating manner. You still have the right to remain silent.

Do Not Open Your Door

- If agents come to your home, ask that a search warrant be passed under your door or shown through a window. Do not open the door for them if they cannot show you a warrant *signed by a judge*. You lose certain rights by allowing agents in to your home.

Do Not Sign Anything

- Do not sign any document that you do not understand. Ask to speak with an attorney and for a hearing in immigration court before signing away any of your rights.