



JULY 2020

DACA FREQUENTLY ASKED QUESTIONS

The recent U.S. Supreme Court decision on DACA, while exciting, has left many in the community with a lot of questions. Below is a list of questions most frequently asked about the DACA program.

Note that this resource is not meant to serve as legal advice, and all individuals who want to understand how the Court's decision impacts them personally should speak with a trusted legal service provider.

1. WHAT IS DACA?

Deferred Action for Childhood Arrivals (DACA) is a policy fought for by immigrant youth and created by the Obama Administration in 2012 to protect certain undocumented individuals who came to the U.S. as children from deportation. In addition to protection from deportation, DACA recipients become eligible for work authorization, a social security number and state-issued driver's licenses. DACA does not grant lawful status nor offer a pathway to citizenship. DACA is granted for a two-year period which recipients may renew, and to date there are approximately 645,610 current DACA recipients.

2. WHAT DID THE U.S. SUPREME COURT DECIDE?

The U.S. Supreme Court rejected the Trump Administration's 2017 attempt to terminate DACA. Although much is still unclear, the decision restores the original 2012 program, meaning that both initial and renewal applications and advance parole applications from DACA recipients **should** be accepted by United States Citizenship and Immigration Services (USCIS). However, uncertainty remains – the Trump administration may try to terminate the program again.

3. HOW DOES THE DECISION AFFECT THE STATUS OF DACA?

The decision restores the original 2012 DACA program in its entirety. This means that those eligible to renew their DACA can continue to do so. Also, USCIS **should** begin to accept applications from individuals applying for DACA for the first time, though they have not yet released information or guidance on the process to do so. Advance parole, which allows DACA recipients to travel abroad with permission, should also become available again.

The decision, unfortunately, does not protect DACA from termination and it reaches no conclusion regarding DACA's legality. Individuals who believe they may qualify for the program should speak to an attorney or Department of Justice accredited representative to learn more about DACA and other immigration relief options that might be available to them.

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4. IS THE DACA PROGRAM PERMANENTLY PROTECTED BY THE U.S. SUPREME COURT DECISION?

Although the U.S. Supreme Court concluded that the way the Trump administration tried to end DACA was unlawful, DACA can still be terminated since the program was created through an executive action. The program can be rescinded in the future, provided the proper process is followed.

5. CAN I APPLY FOR DACA FOR THE FIRST TIME?

We know that the U.S. Supreme Court's decision fully restored the DACA program. Therefore, USCIS **should** accept initial applications. Although the U.S. Supreme Court's decision opened up the possibility for initial applications, USCIS has not issued guidance or updated their website to reflect this information. Thus, it remains unclear how USCIS will process initial applications in light of the decision.

First time applicants who are interested in applying should consult an attorney or DOJ-accredited representative to get an individualized assessment on their DACA eligibility and any potential risks before applying.

If USCIS does not accept initial applications, legal action may be brought to make USCIS comply with the U.S. Supreme Court's opinion. The DACA program has widespread support from allies across many sectors who can mobilize to continue to defend the program.

6. WILL DACA BE TERMINATED AGAIN? IF SO, DO WE KNOW WHEN?

Given the wide-ranging support for the DACA program, it is hard to know whether the Trump administration will try to terminate DACA again and take responsibility for stripping protection from deportation from hundreds of thousands of young people. If they do attempt to limit or terminate DACA again, the timing is hard to predict. We know that the administration will need to do a better job of justifying the termination than they did previously. We also know that the U.S. Supreme Court's decision will require the administration to consider not just the benefits that DACA grants, but also the protection from deportation it affords, and how DACA recipients and the institutions where they work and study have come to rely on the program. It is also possible that additional litigation could ensue if the administration attempts to terminate DACA again.

7. WHAT ARE THE REQUIREMENTS TO APPLY FOR DACA FOR THE FIRST TIME?

All individuals who are interested in applying for DACA for the first time should consult an immigration attorney or DOJ accredited representative to receive an individualized assessment of the risks and benefits involved.

Individuals who can show they meet the following guidelines may be eligible to apply for DACA:

- Were born on June 15, 1981 or after (or have been no older than 30 on June 15, 2012);
- Came to the United States before their 16th birthday;
- Have continuously resided in the United States since June 15, 2007;
- Were physically present in the United States on June 15, 2012 (the date when DACA was announced);

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- Had no lawful status on June 15, 2012;
- Are currently a student (including high school, community college, university, or adult school), have graduated or obtained a certificate of completion from high school, have obtained a GED certificate, or served in the Coast Guard or Armed Forces; and
- Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Remember that when seeking advice on whether to apply for DACA, individuals should disclose all information with the advocate screening them to make sure they receive the best possible advice.

8. WHAT INFORMATION AND EVIDENCE ARE NEEDED TO SUBMIT AN INITIAL DACA APPLICATION?

Applying for an initial DACA application requires extensive evidence to show one meets all the requirements of the program. Individuals will need to submit evidence that proves their age, identity, their physical presence, and their fulfillment of the education requirement. In addition, individuals will need to complete an application which asks for physical addresses, educational information, and criminal history.

Those interested in applying can reference this chart to begin to get an idea of the information that is required: <https://www.ilrc.org/what-documents-will-i-need-apply-daca>.

9. IF I CURRENTLY HAVE DACA, CAN I STILL RENEW AND WHEN SHOULD I SUBMIT THAT RENEWAL?

Eligible DACA recipients may still submit DACA renewal applications to USCIS. If a DACA recipient's case has already expired or will expire in the coming 6 months, they should apply to renew as soon as possible. If an applicant's DACA status expires in the next 6 months to 1 year, they should connect with an attorney or DOJ-accredited representative to discuss some potential benefits and risks of applying earlier, including that the program could be terminated again and that the application costs might increase.

10. WHO CAN HELP ME COMPLETE A DACA APPLICATION OR GIVE ME SOME ADVICE ON MY CASE?

It is strongly recommended that all those who are interested in submitting a renewal or initial application first speak with an immigration attorney or DOJ accredited representative for an individual assessment of their case. 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 see if they would qualify for other forms of immigration relief.

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 not completed or vetted by a legal expert is highly risky.

Visit <https://www.bit.ly/ianimmhelp> or <https://www.informedimmigrant.com/service-organization-search/> to find a trusted legal service provider in your area.

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11. WHAT SHOULD I CONSIDER BEFORE I APPLY FOR DACA?

Individuals seeking to apply for DACA, whether renewing or applying for the first time, should keep in mind that DACA does not provide a path to permanent residence or citizenship and is subject to change. While a sympathetic presidential administration may choose to support and expand opportunities through DACA, the power to discontinue DACA remains a threat.

The risks associated with filing an application will depend on an individual's personal facts. Below are some things that should be considered and discussed with the legal representative helping you.

- **First-time applicants:** Individuals seeking to apply for the first time should keep in mind that the application process will require them to submit evidence about their time in the United States, their immigration history, and their criminal record. Though USCIS has stated that DACA recipient information is protected, it has been reported that some information might be accessible by Immigration and Custom Enforcement (ICE). Additionally, if the program is rescinded in the future, it is unclear how DACA recipients' information might be used. Previous arrests or convictions or prior interaction with immigration authorities may increase the risk of referral for enforcement. All this depends on the person's own story and history. The best thing someone can do is speak to a trusted legal service provider to discuss their case and decide on the best course of action.
- **Renewals:** The risk of renewing your DACA status is comparatively less than applying for the first time, as current or past DACA recipients have already disclosed their personal information to DHS. However, recipients who might have a recent interaction with law enforcement should consult an immigration attorney or a DOJ accredited representative before renewing. This is important since the category of deportation priorities have expanded, and some criminal issues could put an applicant at risk. More information on crimes and DACA renewals can be found at <https://bit.ly/crimesanddaca>.

Since the future of the program is uncertain - with USCIS supporting an end to DACA - first-time applicants should speak to a legal service provider before applying, as they may be eligible for immigration relief with a path to legal status. Other at-risk individuals - *particularly* those with a criminal record or prior removal orders - should speak to an experienced immigration attorney or DOJ accredited representative about the specifics of their situation before deciding on next steps.

12. SINCE DACA WAS RESTORED, WILL IT BE POSSIBLE TO APPLY FOR ADVANCE PAROLE?

Advance Parole may be available to DACA recipients again, making it possible for DACA recipients to travel outside the United States with a travel permit for humanitarian, educational, or employment reasons. However, details about the process are still unclear, and the potential impact of the COVID-19 pandemic may limit the ability to travel internationally.

Individuals who are interested in Advance Parole should speak with an immigration attorney or DOJ accredited representative to get an individualized assessment about risks associated with Advanced Parole before applying and before leaving the United States.

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13. 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. For information on the Dream and Promise Act of 2019 and other proposed bills please visit <https://www.nilc.org/issues/immigration-reform-and-executive-actions/#dreamrelated>.

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