



# PROTECTING INFORMATION IN DACA APPLICATIONS UNDER THE TRUMP ADMINISTRATION

## Introduction

This practice advisory lays out the reasons why, for now, DACA applicants should feel safe that the Trump Administration will not use information contained in a DACA application to deport them.

## Background

When President Obama announced the Deferred Action for Childhood Arrivals (DACA) program in 2012, the government assured applicants that it would not use information included in DACA applications to deport applicants or their families. Relying on the government's promise, nearly 800,000 young people have applied for and received DACA.

In 2017, the Trump Administration changed its immigration policy to make it possible to disclose information shared by DACA applicants. This change of policy has caused much confusion and fear among DACA applicants who worry that the government will use their information against them.

In March 2018, however, a federal court temporarily forced the government to protect information from disclosure if the information came from a DACA application.

## What Did the Obama Administration Promise?

When the Obama Administration introduced the DACA program in 2012, the administration promised that it would protect information shared through DACA applications against disclosure except under limited non-deportation circumstances, such as for national security concerns or to help investigate or prosecute a criminal offense.<sup>1</sup> This protection extended not only to DACA applicants but also to their family members and guardians.<sup>2</sup> The Obama Administration reasserted this promise several times in order to encourage young people to submit their DACA applications.<sup>3</sup>

## What Did the Trump Administration Change?

When the government implemented the DACA program, it actively protected DACA application information against disclosure. Conversely, under the Trump Administration, the government

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<sup>1</sup> Instructions for Consideration of Deferred Action for Childhood Arrivals, USCIS Form I-821D at 13 (Jan. 9, 2017), <https://www.uscis.gov/sites/default/files/files/form/i-821dinstr.pdf> (stating that “[i]nformation provided in this request is protected from disclosure to ICE and U.S. Customs and Border Protection (CBP) for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS’ Notice to Appear guidance (www.uscis.gov/NTA).”).

<sup>2</sup> *Id.*

<sup>3</sup> See, e.g., Letter from Secretary Jeh Charles Johnson to The Honorable Judy Chu (Dec. 30, 2016), <https://chu.house.gov/sites/chu.house.gov/files/documents/DHS.Signed%20Response%20to%20Chu%2012.30.16.pdf>.

released a general privacy policy in January 2017 that “permits the sharing of information about immigrants and non-immigrants with federal, state, and local law enforcement.”<sup>4</sup> Similarly, under revised USCIS DACA FAQs under the Trump Administration, the government now states that such information “will not be *proactively* provided to ICE and CBP for the purpose of immigration enforcement proceedings.”<sup>5</sup> This means that the government has now made it *possible* to share information provided by DACA applicants to initiate deportation proceedings against them and their family members if other agencies make a request.

## Where Do We Stand Now?

Many of the ongoing lawsuits against the Trump Administration’s rescission of the DACA program have mandated the government to continue accepting DACA renewal applications.<sup>6</sup> However, two different courts declined to force the government to protect information included in those applications.<sup>7</sup> Siding with the government, these courts accepted the government’s assertion that the government’s information-sharing policy has not changed as a result of DACA’s rescission.<sup>8</sup>

However, in March 2018, the U.S. District Court for the District of Maryland enjoined the government to prevent it from disclosing information contained in a DACA application.<sup>9</sup> Citing Due Process concerns, the court accepted that it is theoretically possible for the government to use or share information from DACA applicants for deportation purposes.<sup>10</sup> The court stated that if the government needed to use such information “for national security or some purpose implicating public safety or public interest,” the government must ask the court for permission on a case-by-case basis.<sup>11</sup>

For now, DACA applicants should feel safe that the government will not use information contained in their applications to deport them or their families. Those who are scared of submitting a DACA application should know that having DACA would protect them from deportation so long as they remain eligible. Applicants submitting a renewal should also remember that the government already has their information from the previous times that they submitted their DACA applications. Lastly, under the Maryland ruling, the government would only be able to share information contained in DACA applications if the applicant is a threat to public safety or public interest. So long as DACA applicants stay out of trouble, they should consider applying.

<sup>4</sup> DHS, Privacy Policy 2017-01 Questions & Answers, at 3 (Apr. 27, 2017), <https://www.dhs.gov/sites/default/files/publications/Privacy%20Policy%20Questions%20%20Answers%2C%2020170427%2C%20Final.pdf>.

<sup>5</sup> DHS, Frequently Asked Questions: Rescission of Deferred Action for Childhood Arrivals (DACA) (Sept. 5, 2017) (emphasis added), <https://www.dhs.gov/news/2017/09/05/frequentlyaskedquestions-rescission-deferred-action-childhood-arrivals-daca>.

<sup>6</sup> See, e.g., *Regents of Univ. of California v. United States Dep’t of Homeland Sec.*, 279 F. Supp. 3d 1011, 1018 (N.D. Cal. 2018); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 409 (E.D.N.Y. 2018).

<sup>7</sup> *Nat’l Ass’n for the Advancement of Colored People v. Trump*, No. CV 17-1907 (JDB), 2018 WL 1920079, at \*27 (D.D.C. Apr. 24, 2018); *Batalla Vidal*, 291 F. Supp. 3d at 260.

<sup>8</sup> *Nat’l Ass’n for the Advancement of Colored People*, No. CV 17-1907 (JDB) at \*27.

<sup>9</sup> *Casa De Maryland v. U.S. Dep’t of Homeland Sec.*, 284 F. Supp. 3d 758, 778 (D. Md. 2018).

<sup>10</sup> *Id.* at 779.

<sup>11</sup> *Id.*