



Immigrant Legal Services Center

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University of California Immigrant Legal Services Center (“Center”) DACA Post-Northern District of California Injunction Frequently Asked Questions (FAQ) January 10, 2018

The FAQs below are informational and do not constitute legal advice. Each individual case is different, and advice may vary depending on the situation. Further, the information is changing on a daily basis. If you have any questions about your case, please contact a Center attorney for a consultation as soon as possible.

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (“DACA”)

1. I thought DACA was rescinded. What happened in Court?

On January 9, 2018, District Court Judge Alsup in the Northern District of California ruled that the DACA program will continue in the same way as prior to the rescission announcement on September 5, 2017. The Court also directed that United States Citizenship and Immigration Services (“USCIS”) post a notice publicly that it will resume receiving DACA renewal applications and processing them. The Court Order applies nationwide.

2. Has the DACA eligibility requirements as Ordered by the Court changed in any way?

No. Based on the Court’s Order, the eligibility requirements for DACA have not changed. However, we are still awaiting further information from USCIS on how to apply. If you believe you are eligible for DACA, please make an appointment with a Center attorney.

As a reminder, to be eligible for DACA, you must:

1. Have been under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching your 16th birthday;
3. Have continuously resided in the United States since June 15, 2007 up to the present time;
4. Were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;
5. Had no lawful status on June 15, 2012;
6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
7. 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.

The circumstances listed in the bullet points below could trigger enforcement action - it is very important to consult with an attorney if any of the following applies to you:

- You have had any contact with law enforcement, including arrests, convictions, or any other criminal issues;
- You have had any contact with immigration authorities, including detention, deportation, or removal from the United States; or
- You have moved and changed your address.

3. Does this mean I can apply for DACA Renewal now if I meet eligibility requirements? If so, how do I apply?

Not yet. USCIS has not yet issued the process for renewing DACA applications as of January 10, 2018. Once we receive that procedure, we will update this FAQ. However, if you choose to apply using the existing I-821D, I-765, and I-765WS forms that were used to renew DACA prior to its rescission, it is possible that your application may be rejected and you may lose your filing fee.

4. Does this mean I can apply for DACA now if I have never applied before? If so, how do I apply?

Maybe, but not yet. As stated above, USCIS has not yet provided a procedure to apply to DACA, whether it be for Renewal or new application. Once USCIS provides an update, we will update this FAQ. However, the Court did instruct USCIS that it is not prevented from accepting deferred action applications from people who have never before received deferred action on “an ad hoc basis.” This means USCIS can decide whether or not to accept new DACA applications again, and look at each individual DACA application it receives and decide what to do on a case-by-case basis.

5. Does this mean I can apply for DACA now if it has been more than one year since my last DACA period expired? If so, how do I apply?

Maybe, but not yet. If you have received DACA before but did not renew and more than one year has passed since your most recent DACA expiration date, then you would likely have to file an initial DACA application with supporting documents that establish you are eligible for DACA. USCIS has not yet provided a procedure to apply for DACA. Please see Question 4.

6. Can I apply for Advance Parole?

Maybe. If you apply for Advance Parole now, it is possible your application may be rejected. The Court instructed USCIS that it is not prevented from “granting Advance Parole in individual cases it finds deserving.” This means that, although it may be possible to apply for Advance Parole now, you should consult with a Center attorney prior to applying, otherwise you may risk losing your application fee.

7. Can I get funding for my DACA application fees?

Maybe. There may be funding available for DACA application fees, which were \$495 prior to DACA’s rescission. As the Center receives that information, we will update this FAQ.

8. What can I do right now if I want to apply for DACA Renewal?

Although USCIS has not posted procedures for DACA Renewal yet, you can prepare the materials you would likely need for a Renewal application:

- Obtain 2 passport-sized photos;
- Make a copy of your current Employment Authorization Document (EAD) card;
- Write down all addresses you have lived at since you last applied for DACA; and
- If applicable, gather documents related to any criminal or immigration issues you have experienced.

9. I am a current DACA recipient. What will happen to the information I provided on my DACA application(s)?

Even though the original DACA program promised that information would not be shared with ICE, we do not know if the new administration will maintain that promise.

CONTACT WITH IMMIGRATION ENFORCEMENT

10. What can I do if I come in contact with ICE?

The U.S. Constitution guarantees rights to all people in the U.S., regardless of citizenship status, which includes the right to be free from unlawful searches and seizures. In practical terms, that means that during a police or immigration officer encounter:

- You have the right to remain silent;
- You should stay calm and be polite;
- You should not lie about your citizenship status or provide fake documents;
- You do not have to sign anything (if you sign, you may be giving up your opportunity to stay in the U.S.);
- If immigration comes to your home, you do not have to open your door unless an officer has certain kinds of warrants and you should ask the officer to slip the warrant under the door or hold it up to a window so you can inspect it;
- If you are taken into immigration custody, you have the right to a lawyer (however, please note that the government does not have to provide one for you); and
- Additionally, if you are in immigration custody, you have the right to contact your consulate.

You can carry the UC Know Your Rights card and/or the Immigrant Legal Resource Center’s “red card” with you to read your rights in case of contact with ICE.¹ To read more about your rights, please see the National Immigration Law Center's resources.²

11. What can I do to keep my family safe?

You can help them develop a safety plan, as well as inform them of their rights. Please see the Immigrant Legal Resource Center’s family preparedness plan.³

¹ Available at <https://www.ilrc.org/red-cards> (available in English and Spanish).

² Available at <https://www.nilc.org/issues/immigration-enforcement/everyone-has-certain-basic-rights/>. For multi-lingual Know Your Rights materials please see: <http://www.immdefense.org/ice-home-and-community-arrests/>.

³ Available at <https://www.ilrc.org/family-preparedness-plan>.

How to Contact the UC Immigrant Legal Services Center:

E-Mail: ucimm@law.ucdavis.edu

Office Phone: 530.752.7996

Website: <http://law.ucdavis.edu/ucimm>

*You may also contact the attorney assigned to your campus if you have his or her information.

Please note that this FAQ is updated regularly as we get more information. We are working to address issues as they come up.