



Update on Deferred Action for Childhood Arrivals (DACA)

June 2020

INTRODUCTION

On June 18, 2020, the **U.S. Supreme Court** found that the Trump administration's attempted rescission (termination) of the **Deferred Action for Childhood Arrivals (DACA)** program in September 2017 was unlawful. Since it was introduced in 2012, DACA has made a huge difference in the lives of so-called "DREAMers," or individuals brought to the United States as children who do not have legal immigration status in the U.S. Nearly 700,000 formerly undocumented individuals have obtained work permits and temporary protection from deportation under the program. But while the Supreme Court's decision is an important **victory** for the immigrant community, DACA is still in a precarious situation, and DACA holders still need and deserve a legislative solution to gaining long-term permanent legal status in the U.S.

WHAT IS DACA?

DACA was created by President Obama in June 2012 in order to provide temporary protection from removal (deportation) and eligibility for work authorization to certain young people who have lived in the U.S. since they were children. Qualifying individuals would need to renew their DACA and work permits every two years, and they would be eligible to travel outside the U.S. and return legally through "advance parole" under certain circumstances (i.e., for humanitarian, educational, or employment reasons). It does NOT lead to long-term immigration status, including lawful permanent residence ("green card") or U.S. citizenship.

WHO QUALIFIES FOR DACA?

To qualify for DACA, an individual must:

1. Have been under the age of 31 on 6/15/2012;
2. Have entered the U.S. before his/her 16th birthday;
3. Have continuously resided in the U.S. since at least 6/15/2007 through the present;
4. Have been physically present in the U.S. on 6/15/2012 and have not left the U.S. since that time;
5. Have entered the U.S. without inspection before 6/15/2012, or had lawful immigration status that expired as of 6/15/2012, and not be in lawful status at the time of application for DACA;
6. Currently be in school, have graduated from high school, have obtained a GED, or be an honorably discharged veteran of the U.S. Armed Forces or Coast Guard; and
7. Not have been convicted of a felony, a significant misdemeanor, or 3 or more other misdemeanors, and not be a threat to national security or public safety.

Also, first-time applicants must be at least 15 years old at the time of application, unless they are already subject to a final order of removal (deportation).

HISTORY OF DACA LAWSUITS

President Trump rescinded (terminated) the DACA program in September 2017, providing a short wind-down period that allowed some individuals to file one last renewal application. Multiple lawsuits challenging the rescission were filed, and in January and February 2018, federal courts ordered U.S. Citizenship and Immigration Services (USCIS) to continue accepting and processing DACA *renewals* while the litigation continued; however, new *initial* DACA applications for individuals who had never had DACA before, as well as DACA-based advance parole applications, were halted. This remained the status

quo for the past few years as the various lawsuits eventually made their way to the Supreme Court, which heard oral arguments in the cases in November 2019.

WHAT DID THE SUPREME COURT DECIDE?

On June 18, 2020, the U.S. Supreme Court issued its decision in *Department of Homeland Security v. Regents of the University of California*. The Court found that the 2017 rescission of DACA was “arbitrary and capricious” and did not follow the proper procedures required by law when ending such a program. The Court did *not* say that DACA can never be taken away, but rather ruled that the *way* in which the Trump administration tried to end the program in 2017 was unlawful.

WHAT DOES THE SUPREME COURT’S DECISION MEAN?

The decision means that the DACA program *should* go back to the way it was before September 2017 – in other words, that USCIS should start accepting new initial DACA applications and DACA-based applications for advance parole again, in addition to continuing to accept and process renewal applications as it has been doing for the past few years. But USCIS has not yet issued instructions or guidance on accepting new initial DACA applications or DACA-based advance parole applications since the Supreme Court’s decision was released, so it is best to speak to a legal representative before submitting any applications. In addition, USCIS could still end the program (again) if it follows the proper procedures this time, though it is not yet clear when or if that will happen.

WHAT SHOULD I DO IF I HAVE QUESTIONS, WANT TO RENEW MY DACA, OR WANT TO APPLY FOR DACA FOR THE FIRST TIME?

Individuals with questions about their specific situations should consult with an immigration attorney or Department of Justice (DOJ) Accredited Representative. You can contact **Catholic Charities’ Hogar Immigrant Services – Legal** program at **(703) 534-9805** or **Hogar@ccda.net** for assistance, or for additional referrals to other reputable lawyers and nonprofit organizations in the area. Hogar is currently offering **remote consultations by telephone and videoconference** during the COVID-19 pandemic.

If you currently have DACA and need to **renew**, it is important to remember that the Trump administration’s immigration enforcement priorities are significantly different from those under the Obama administration, so speaking with an attorney before renewing can help weigh the potential benefits and risks of renewing for your individual situation. USCIS has also proposed to increase the DACA renewal fee from \$495 to \$765 (a 55% increase) in the near future; it is not yet known exactly when the new fee will go into effect, but it may be best for you to apply for renewal before the fee increases.

If you have never had DACA before and want to file an **initial** application once USCIS issues instructions for doing so, you can use this time to begin gathering documents that you will eventually need to submit to the government. This includes documentation of any criminal arrests, charges, or convictions you may have; proof of your entry into the U.S. before your 16th birthday; and documentation that you have been physically present in the U.S. for the past 13+ years (since at least 6/15/2007 through the present).

If you are interested in applying for **advance parole** based on your DACA status, you should check the USCIS website for guidance and consult with a legal representative before applying. Keep in mind that, even if USCIS begins accepting advance parole applications for DACA recipients again, the COVID-19 pandemic may create significant additional complications to international travel.

Finally, all current and potential future DACA holders and applicants should meet with an immigration attorney or DOJ Accredited Representative to be **screened for eligibility for more permanent forms of immigration status**. DACA is only a temporary form of relief and may still disappear in the future, but you may be eligible for a different immigration status and not even know it! Given the uncertainty of DACA’s future, assessing your eligibility for a more permanent status is always a good idea.