

# The Current State of DACA (Deferred Action for Childhood Arrivals)

September 2020

**PRESENTED BY:**

MELISSA PHATHARANAVIK, STAFF ATTORNEY & CLINICAL  
SUPERVISOR, IMMIGRATION UNIT

RAMON BECERRA ALCANTAR, PARALEGAL AND DOJ  
ACCREDITED LEGAL REPRESENTATIVE, IMMIGRATION UNIT



## What We'll Cover

- What is DACA?
- What is the Current Status of the DACA Program?
- Who Can Apply for DACA Right Now?
- Who is Eligible for DACA?
- Overview of Other Immigration Options
- Accessing Free Immigration Legal Services from EBCLC



## What is DACA?



- Deferred Action for Childhood Arrivals (DACA) gives undocumented **immigrants temporary protection from deportation**. DACA also allows recipients to receive a **work permit** and be lawfully present in the U.S.
- DACA was the result of youth organizing after Congress' failure to pass the DREAM Act.
- On June 15, 2012, President Obama announced that the Department of Homeland Security (DHS) would not deport certain eligible immigrants in an exercise of "prosecutorial discretion."
- Now, the Trump administration is working to dismantle DACA – but **DACA remains in effect, with certain limitations, for now.**

## DACA Litigation Timeline



## Current Status of the DACA Program



At the present time:

- USCIS is not accepting *first-time* DACA applications.
- USCIS is accepting DACA renewal applications. This means anyone who currently has DACA or had DACA in the past can renew.
- USCIS is accepting Advance Parole (AP) (travel document) applications in “exceptional circumstances.”

## Current Status of the DACA Program (continued)

### June 2020 SCOTUS Decision

- On June 18, 2020, the Supreme Court of the United States (SCOTUS) ruled that the Trump administration’s attempt to end DACA was unlawful.
- Under the SCOTUS decision, DACA recipients continue to be protected from deportation and eligible for benefits such as work authorization.
- While the SCOTUS decision should have restored the DACA program in its entirety, the Trump administration has substantially limited the program.

### July 2020 DHS Memorandum

On July 28, 2020, the Department of Homeland Security (DHS) released a memorandum substantially limiting the DACA program.

1. **All first-time DACA applications will be rejected**, eliminating DACA eligibility for individuals who have not received DACA in the past.
2. The DACA protection and **work authorization period** for DACA recipients will be **shortened to one year**, subject to renewal.
3. Advance Parole (travel outside of the U.S.) is limited to “exceptional circumstances.”

# Current Status of the DACA Program (continued)

August 2020 USCIS Implementing Guidance

On August 21, 2020, U.S. Citizenship and Immigration Services (USCIS) issued implementing guidance:

- **USCIS will reject all initial (first-time) DACA applications.**
- **USCIS will reject DACA renewal applications filed more than 150 days in advance of current DACA expiration date.**
- **USCIS will issue DACA protection/work authorization for a one-year period**, instead of two years. This means recipients must now renew their DACA annually.
  - Same fee of \$495
  - If filing for replacement for two-year work permit, replacement will be issued for two-year period
- **USCIS will consider Advance Parole applications under “exceptional circumstances”** such as urgent humanitarian reasons or significant public benefit. Adjudicated case-by-case and entirely discretionary.
  - Examples of “exceptional circumstances”: Travel to support national security of US, travel to support U.S. federal law enforcement interest, travel to obtain life-sustaining medical treatment that is not otherwise available in US, travel needed to support immediate safety, wellbeing, or care of immediate relative
  - If you think you qualify for Advance Parole, talk to a legal representative about the risks and advantages of traveling on Advance Parole.

## Who Can Apply for DACA Right Now?

### Current DACA Recipients

- **If your DACA is expiring within 150 days, you can apply to renew your DACA now.**
- **Speak to a legal representative if you have new (or previously undisclosed) criminal history since your last DACA application.**

### Individuals with Expired DACA

- **You can still apply for DACA even if your DACA expired or was terminated.**
- **If your DACA expired more than one year ago, you must complete the application as if it were your first time applying.**
- **Speak to a legal representative if you have any criminal history.**

## First-Time Applicants: Who is Eligible for DACA?

First-time DACA applications are **not** currently being accepted, but it is always a good idea for undocumented individuals to be screened for DACA and other immigration remedies.

You may be eligible to apply for DACA in the future if you:

1. Were born on or after June 16, 1981;
2. Came to the U.S. before you turned 16 years old;
3. Have continuously resided in the U.S. since June 15, 2007 up to the present time;
4. Were physically present in the U.S. on June 15, 2012 and at the time you file your DACA application;
5. Entered the U.S. without inspection, or your lawful immigration status expired as of June 15, 2012;
6. Are currently in school, have graduated high school, or obtained a GED;
7. Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors; and
8. Are at least 15 years old at the time you file your application, unless you are or were in removal proceedings.

**All eligible individuals should speak to a legal representative about applying for DACA for the first time and start gathering proof of physical presence.**

## Common Complications: Criminal Bars to DACA



### Part 4. Criminal, National Security, and Public Safety Information (For Initial and Renewal Requests)

If any of the following questions apply to you, use Part 8. Additional Information to describe the circumstances and include a full explanation.

1. Have you **EVER** been arrested for, charged with, or convicted of a felony or misdemeanor, including incidents handled in juvenile court, in the United States? Do not include minor traffic violations unless they were alcohol- or drug-related.  Yes  No

If you answered "Yes," you must include a certified court disposition, arrest record, charging document, sentencing record, etc., for each arrest, unless disclosure is prohibited under state law.

2. Have you **EVER** been arrested for, charged with, or convicted of a crime in any country other than the United States?  Yes  No

If you answered "Yes," you must include a certified court disposition, arrest record, charging document, sentencing record, etc., for each arrest.

- To qualify for DACA, you do not "pose a threat to national security or public safety," and have not been convicted of:

1. A felony;
2. A significant misdemeanor; or
3. Three or more other misdemeanors.

**Felony:** A federal, state, or local criminal offense punishable by imprisonment for a term more than one year.

**Significant Misdemeanor:** An offense of

- Domestic violence;
- Sexual abuse or exploitation;
- Burglary;
- Unlawful possession or use of a firearm;
- Drug distribution or trafficking;
- Driving under the influence; or
- Other offense sentenced to custody for more than 90 days served

For purposes of DACA, **minor traffic offenses** will not be considered a misdemeanor – but must be minor!

## Overview of Other Immigration Options

### Special Immigrant Juvenile Status (SIJS)

If you have been **“abused, abandoned or neglected”** by one or both of your biological parents, you may be eligible for SIJS.

SIJS allows certain children (unmarried and under 21) to get Lawful Permanent Residency (or a “green card”) after a state court decides that they cannot live with one or both parents due to “abuse, neglect, or abandonment” and it is not in their best interest to return to their home country.

### U Visa, T Visa, VAWA

If you have been a **victim of a crime**, such as assault, robbery, domestic violence, or human trafficking, you may be eligible for a U visa, T visa, or Violence Against Woman Act (VAWA) status.

Having U visa, T visa or VAWA status allows you to later apply for a green card.

### Asylum

If you **fear returning to your home country because you were targeted based on your race, religion, nationality, political opinion, or membership in a social group** (such as based on your sexual orientation), you may qualify for asylum.

Asylees can bring their family members to the U.S.; and after one year, asylees can apply for a green card.

### Family Members

Your **U.S. citizen or Lawful Permanent Resident (LPR) family member** may be able to petition for you.

U.S. citizens can petition for their spouse, parents, sons and daughters (single or married), and siblings.

LPRs can petition for spouse and unmarried sons and daughters.

## Common Complications for Immigration Relief



- Criminal History
- Prior Deportation Orders
- Illegal Presence in the U.S.
- Illegal Entry into the U.S.

## Free Immigration Legal Services for Community College Students

- If you are a student at **Chabot College, Merritt College, Laney College or College of Alameda**, you can schedule a free immigration legal consultation with EBCLC.
- Appointments can be made online:
  - Chabot College: [www.EBCLCImmigrationLegalClinics.as.me/Chabot](http://www.EBCLCImmigrationLegalClinics.as.me/Chabot)
  - College of Alameda: [www.EBCLCImmigrationLegalClinics.as.me/Alameda](http://www.EBCLCImmigrationLegalClinics.as.me/Alameda)
  - Laney College: [www.EBCLCImmigrationLegalClinics.as.me/Laney](http://www.EBCLCImmigrationLegalClinics.as.me/Laney)
  - Merritt College: [www.EBCLCImmigrationLegalClinics.as.me/Merritt](http://www.EBCLCImmigrationLegalClinics.as.me/Merritt)



## Free Immigration Legal Services for Current UC Berkeley Students

- In partnership with the Undocumented Student Program (USP), EBCLC provides free general consultations and full-scope legal representation on a wide range of immigration matters to UC Berkeley students.
- If you are a **current UC Berkeley student or a UC Berkeley student who graduated *within the past six months***, you can schedule a free immigration legal consultation with EBCLC.
- Appointments can be made online: <https://undocu.berkeley.edu/legal-support-overview/legal-support-appointments/>



## What to Expect at Your Consultation Appointment with EBCLC

1. General intake (biographic information, income, household information)
2. Questions about your immigration history (entry to the U.S.,
3. Questions about your family history (relatives in the U.S., etc.)
4. Questions about your criminal history and any contact with law enforcement generally
5. Questions about your health status (HIV+, physical or mental disability)
6. Assessment of your immigration relief options and questions about issues that may lead to immigration relief: fear of returning to home country, victim of crime or domestic violence, etc.
7. General assessment of other issues for legal referrals



## Additional Resources

- Check the EBCLC website for updates on DACA: <https://ebclc.org/daca-legal-services/>
- For questions about your specific situation, please make an individual legal appointment
- You can also reach us by email:
  - UC Berkeley: [USPLegal@ebclc.org](mailto:USPLegal@ebclc.org)
  - Chabot College: [ChabotLegal@ebclc.org](mailto:ChabotLegal@ebclc.org)
  - College of Alameda: [AlamedaLegal@ebclc.org](mailto:AlamedaLegal@ebclc.org)
  - Laney College: [LaneyLegal@ebclc.org](mailto:LaneyLegal@ebclc.org)
  - Merritt College: [MerrittLegal@ebclc.org](mailto:MerrittLegal@ebclc.org)



**We look forward  
to serving you!**

