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THE DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) PROGRAM -- WHAT MIGRANT EDUCATORS NEED TO KNOW

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- I. Background/Overview of the Issue
- II. Eligibility
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- IV. Renewal/Fees
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NATIONAL IMMIGRATION LAW CENTER

UPDATE – AUGUST 31, 2018: In an order filed on Fri., Aug. 31, the U.S. District Court for the Southern District of Texas **declined to issue a preliminary injunction** that might have affected the ability of people with DACA to apply to renew their DACA. In the coming days, NILC will be updating its DACA-related materials to reflect the effects of the Aug. 31 ruling.

Should I renew my DACA *now*?

THE TORCH: CONTENTS

By Ignacia Rodriguez, NILC immigration policy advocate
AUGUST 7, 2018

Lately people have been asking, *Why the uptick in chatter about renewing DACA now?* Starting this summer, advocates began encouraging people to renew as soon as possible, even though the option to renew has been around since January.

What changed? Remember, U.S. Citizenship and Immigration Services (USCIS) did not begin accepting DACA renewal applications voluntarily. USCIS began accepting DACA renewal applications again only because federal judges in California and New York ordered it to. Court orders, as we've seen most recently in the Texas case that blocked DAPA (Deferred Action for Parents of Americans) and *expanded* DACA and also in the Muslim ban court cases, can change over time. A judge's order can be appealed by the party that disagrees with it, and at the appellate stage the order can continue in effect, can be paused or reversed, or can be modified.

We knew the decisions issued in these cases would probably be appealed (usually a U.S. district court decision is appealed to the court of appeals for the "circuit" corresponding to the state where that district court is located) and that at least one of these cases could then make its way all the way to the U.S. Supreme Court. The probability of an appeal became reality when the federal government appealed the decisions issued by the courts in California and New York.

Litigating a case takes time. Time is allotted for each party to submit briefs that lay out its arguments, and the court schedules hearings as necessary to hear the parties' arguments. It is very rare for a judge to issue a ruling during or immediately after a hearing, so days, weeks, even months can go by before the judge issues a ruling. This is why, before this summer, some experts expected the DACA renewal process to be available at least through this month (August 2018) and maybe longer. In addition, the U.S. Supreme Court won't be back in session until October, so under usual circumstances it wouldn't hear an appeal of one of the DACA cases before then.

So what happened this summer? Back on May 1st, Texas and six other states filed a lawsuit arguing that the DACA program is illegal and shouldn't have been created in the first place. They are asking for a court in Texas to order USCIS to stop accepting DACA applications. On August 8, U.S. District Court Judge Andrew Hanen will hold a hearing in their case in Houston, Tex.

Nobody knows for certain what will happen either during this hearing or afterwards, including how a possible negative ruling by a judge in Texas will affect the orders issued by federal courts in California and New York. It is unlikely that Judge Hanen will issue a ruling or order on August 8. But some experts think it's at least possible that USCIS could stop accepting and processing DACA renewal applications as early as the end of August. Depending on what happens in the courts, the option to renew may remain indefinitely or may be modified or eliminated by decisions in these district courts, circuit courts of appeals, or the U.S. Supreme Court.

Should you renew your DACA now, even if your DACA expires in February 2019? May 2019? December 2019? *You will need to decide whether it makes sense for you to apply for DACA renewal now. We highly encourage you to speak with an attorney or a Board of Immigration Appeals–accredited representative before you submit a renewal application, to discuss the possible benefits and risks of applying early. Some attorneys or accredited representatives may advise you against applying now, because USCIS used to not accept renewal applications filed more than 150 days before the applicant's DACA expiration date. However, since it became possible again, in January, to apply for DACA renewal, USCIS *has* accepted renewal applications filed more than 150 days before expiration.*

Still, you must consider the risks and benefits of applying early. Considerations include but are not limited to:

- If you apply early, USCIS could deprioritize your application and, while you're waiting for your case to be processed, the option to renew may end. If the option to renew ends, USCIS *may* "grandfather in" already-accepted applications and continue processing them *or* USCIS *may* stop processing already-accepted applications and *may* return the application fees that were submitted with the unprocessed applications (like what happened when DACA and advance parole for DACA recipients were terminated in September 2017). *Can you afford to lose the \$495 fee if USCIS decides not to return fees? Can you afford to send your application by certified mail, to have an additional way of tracking it, to prove that it should be "grandfathered in" if the government decides to process already-submitted applications?*
- If you apply early and are granted DACA renewal, your "new" DACA and work permit *may* start being valid before your "old" DACA and work permit expire. Nevertheless, your new work permit will expire two years after its date of approval. Currently, it's taking USCIS about 3-5 months to adjudicate an application, but some applications have been adjudicated faster.

Example: Your *current* DACA and work permit expire in December 2019. You submit a renewal application today, and USCIS accepts it. USCIS grants your DACA renewal in October 2018. Therefore, your *renewed* DACA and work permit will expire in October 2020. In other words, by applying now, you may gain a total of only 10 more months of DACA and work authorization. You must ask yourself: *Is having those 10 additional months of DACA worth the effort and expense of applying? Will I feel more at peace knowing I have more time with DACA, even if it's only 10 months? What will I feel like if the court orders that require USCIS to accept DACA renewals remain in effect for months or even years?*

If you decide to go ahead and apply now, we recommend doing so as soon as possible, since the situation with the court cases is so uncertain. We wish we could answer with a simple "yes" or "no" when people ask us whether they should apply now, but, along with everyone else, we simply don't know now what will happen in the courts in the next weeks and months. But we *will* continue to provide information and updates to help you plan for your future.



FREQUENTLY ASKED QUESTIONS

USCIS Is Accepting DACA Renewal Applications

Last updated AUGUST 2018

ON JANUARY 9, 2018, Judge William Alsup of the U.S. District Court for the Northern District of California ordered a halt to the federal government's *termination* of the Deferred Action for Childhood Arrivals, or DACA, program. In the case *Regents of the University of California, et al. v. Department of Homeland Security, et al.*, Judge Alsup granted a preliminary injunction — a temporary order blocking the termination of the DACA program while the case goes forward — requiring U.S. Citizenship and Immigration Services (USCIS) to begin accepting DACA renewal applications again.¹ On January 13, 2018, USCIS announced its process for accepting renewal applications. USCIS also stated that further guidance about DACA renewal applications under the court order would be provided later.

United We Dream and the National Immigration Law Center drafted the following answers to frequently asked questions about the Jan. 13 announcement and subsequent developments.

■ Can I submit a first-time application for DACA?

NO. If you have never had DACA before, you may not submit an application now. Only people who have had DACA at some point in the past can submit a *renewal* application.

In another DACA-related case, *NAACP v. Trump*, Judge John D. Bates of the U.S. District Court for the District of Columbia issued an order that if the federal government did not submit additional information to the court showing that the government's attempt to terminate the DACA program is justified under federal law, USCIS would be required to start accepting, again, first-time applications for DACA as well as applications from DACA recipients for advance parole. The court gave the government 90 days to submit the additional information (a period that ended on July 23, 2017).

On June 22, the government submitted a new DACA-termination memorandum to the court. The memorandum, which is from U.S. Department of Homeland Security (DHS) secretary Kirstjen Nielsen, restates DHS's rationale for ending the DACA program. Then on August 17, the court in DC issued an order that partially *stays* its previous order that the DACA program be fully reinstated. (A *stay* is a court order that halts further legal proceedings or the enforcement of orders in a case until the stay is either removed or made permanent.)

This means that, for now, USCIS is still *not* accepting either *first-time applications for DACA* or applications from DACA recipients for *advance parole*.

■ Even though USCIS isn't accepting first-time applications now, should I prepare my first-time application in case it *does* start accepting them?

You may prepare an application if you want to, but at this time nobody knows for certain if

¹ www.nilc.org/wp-content/uploads/2018/01/Regents-v-DHS-prelim-injunction-2018-01-09.pdf.

USCIS will ever be required to resume accepting first-time applications for DACA. Even if you do not prepare a complete application, you can gather documents that prove you meet the [DACA eligibility guidelines](#) and begin setting money aside to pay the \$495 application fee.²

■ **I have DACA. Can I apply for *advance parole*?**

NO. Currently, USCIS is *not* accepting applications for advance parole from DACA recipients.

■ **Can I apply to *renew my DACA*?**

YES. If you were *granted* DACA, you may submit an application to renew your DACA.³ You must also meet the following requirements in order to qualify for DACA renewal:

- You must *not* have departed the U.S. on or after August 15, 2012, without first having been granted *advance parole*.
- You must have resided continuously in the U.S. from the time you submitted the initial request for DACA up until the present time.
- You must not have been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and must not otherwise pose a threat to national security or public safety.

■ **I am interested in applying to *renew my DACA*. Does it matter when my DACA expires or expired?**

USCIS has reopened the DACA renewal application process for anyone whose DACA has expired. However, the process for applying is different if your DACA expired before September 5, 2016. If your DACA *expired before September 5, 2016*, you can request to renew your DACA, but you must fill out the application *as if you were applying for the first time*. And you must submit evidence showing that you meet [each DACA eligibility guideline](#).⁴

If you had DACA and your period with DACA was cut short by the DHS (that is, if DHS terminated your DACA), you can apply again for DACA by filling out your DACA application as if you were applying for the first time. In this case, too, you will be required to submit evidence showing that you meet [each DACA eligibility guideline](#).⁵

When the announcement that DACA was being terminated was made, USCIS imposed the limitation that only people whose DACA expiration dates fell between September 5, 2017, and March 5, 2018, would be allowed to reapply, but that rule does *not* apply to the process announced on January 13, 2018.

Currently, USCIS is accepting and processing DACA applications submitted by people whose DACA expires more than 150 days after they submit their application. Early in the DACA program, USCIS stated that it would reject DACA renewal applications from such people. Later, USCIS encouraged DACA recipients to complete their renewal application during the 120 to 150-day window before expiration, to provide enough time for processing and to avoid a lapse in their DACA, but did not reject renewal applications from people who submitted them more than 150 days before their DACA expired. Since January 2018, USCIS has been accepting (and

² DACA eligibility guidelines: <https://www.uscis.gov/archive/consideration-deferred-action-childhood-arrivals-daca#guidelines>.

³ Information from USCIS about requesting DACA for the first time and applying to renew DACA is available from <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process>.

⁴ See note 2, above.

⁵ See note 2, above.

not rejecting) applications for renewal from people whose DACA will expire more than 150 days after the date they submit their application.

However, *before you submit a renewal application more than 150 days before your DACA expires*, we urge you to speak with an attorney or other knowledgeable legal services provider to discuss the benefits and risks of applying early. We suggest that you consider these issues:

- If you apply early, USCIS could deprioritize your application and, while you're waiting for your case to be processed, the option to renew may end. If the option to renew ends, USCIS *may* "grandfather in" already-accepted applications and continue processing them *or* USCIS *may* stop processing already-accepted applications and *may* return the application fees that were submitted with the unprocessed applications (like what happened when DACA and advance parole for DACA recipients were terminated in September 2017).
- If you apply early and are granted DACA renewal, your "new" DACA and work permit *may* start being valid before your "old" DACA and work permit expire. Nevertheless, your new work permit will expire two years after its date of approval. Currently, it's taking USCIS about 3-5 months to adjudicate an application, but some applications have been adjudicated faster.

EXAMPLE: Your *current* DACA and work permit expire in December 2019. You submit a renewal application today, and USCIS accepts it. USCIS grants your DACA renewal in October 2018. Therefore, your *renewed* DACA and work permit will expire in October 2020. In other words, by applying now, you may gain a total of only 10 more months of DACA and work authorization.

If you decide to go ahead and apply now, we recommend doing so as soon as possible. Future developments in DACA-related court cases *may* make it harder or impossible to renew DACA. Information about the status of DACA-related court cases and how decisions and orders in these cases affect the DACA program is available at www.nilc.org/daca-litigation-timeline/ and www.nilc.org/daca/ (look under the Litigation tab).

■ **To be eligible to apply for DACA renewal, do I have to be living in California or New York?**

NO. Though the first two U.S. district courts that ordered USCIS to resume accepting DACA renewal applications are located in California and New York, their orders and the renewal process announced by USCIS apply nationwide.

■ **When should I apply to renew my DACA?**

You should assess whether it makes sense for you to apply as soon as possible (see the answer to "**I am interested in applying to renew my DACA. Does it matter when my DACA expires or expired?**," above). There is no deadline by which applications are due. However, DACA-related court cases are pending in various federal courts, including a case in the U.S. District Court for the Southern District of Texas (*Texas v. Nielsen*) that challenges the lawfulness of the DACA program. The DACA renewal program may be available indefinitely, or it may be stopped by the court in Texas or another court, depending on future developments in these court cases.

■ **Will I be able to apply after August 2018 to renew my DACA?**

As of the date this FAQ was published, nobody knew how long the option to renew DACA would be available. As this FAQ is being written, there is no *one* deadline by which people with DACA

must apply for DACA renewal if they want to renew their DACA. However, some advocates are encouraging people who *want* to apply for renewal to apply *now*, given the uncertainty about what may happen in the various DACA-related court cases.

In one of those cases, *Texas v. Nielsen*, the U.S. District Court for the Southern District of Texas has already heard arguments on the plaintiff states' motion for a preliminary injunction against the DACA program. This case was brought by Texas and other states to challenge the lawfulness of the DACA program, not to challenge the Trump administration's termination of the program. The hearing on the preliminary injunction motion took place on August 8, 2018. The court in Texas will now decide whether to issue a preliminary injunction against the DACA program, possibly ordering USCIS to stop accepting DACA applications, including applications for renewal. The court may rule on the preliminary injunction at any time.

The judge in that case, Andrew Hanen, does not have the authority on his own to overrule the injunctions issued by the U.S. district courts in California and New York that currently allow people with DACA to apply to renew it. If Judge Hanen issues a ruling that DACA is unlawful, there will be subsequent proceedings in courts across the country to determine if the current court orders allowing renewals will continue in effect. Developments in these DACA-related court cases may affect the availability of DACA renewals.

■ What should I do to prepare to apply to renew my DACA?

To prepare to apply to renew your DACA:

- It's crucial to weigh the pros and cons of applying at this time. You must consider the possibility that a court order *may* stop USCIS from continuing to accept applications before or even while your application is pending, which means you may risk losing the \$495 fee you must pay when you file the application. If this were to happen, USCIS *may* "grandfather in" already-accepted applications and continue processing them *or* USCIS *may* stop processing already-accepted applications and *may* return the application fees that were submitted with the unprocessed applications (like what happened when DACA and advance parole for DACA recipients were terminated in September 2017).
- It's important that the information in the renewal request be *consistent* with the information provided in your initial application and any past renewal applications. Therefore, we recommend that when preparing your renewal application now, you *refer to a copy* of your *initial* and *renewal* DACA applications, if that's possible. You should also make a copy of the current renewal application before you submit it.
- You must have put aside \$495 to pay the renewal application fees. If you are having trouble paying the fees, consider creating a [GoFundMe](#) campaign and applying for a grant from United We Dream's [DACA Renewal Fund](#).⁶
- If you have received legal citations, been arrested, or been criminally charged or convicted since initially receiving DACA, you must gather evidence of these contacts with law enforcement or the courts. We highly recommend speaking to an attorney or a BIA (Board of Immigration Appeals)-accredited representative prior to applying, because given changes in who is considered an "immigration enforcement priority," the risks associated with applying may be different if you have had interactions with law enforcement.
- If you have a deportation order, a voluntary departure order, or an administratively closed immigration case, we highly recommend speaking to an attorney or BIA-accredited

⁶ www.gofundme.com; <https://unitedwedream.org/2018/04/daca-recipient-needs-support/>.

representative before you apply. Given the change in who is now considered an “immigration enforcement priority,” the risks associated with applying may have changed.

- If you are currently in exclusion, deportation, or removal proceedings, you must submit any new documents related to your case, unless you already submitted them to USCIS when you first applied for DACA or unless your case was administratively closed. We recommend speaking to an attorney or BIA-accredited representative before you apply to assess how applying for DACA will affect your case.

■ How do I apply to renew my DACA?

If your DACA **expired before September 5, 2016**, you can request to renew your DACA, but *you must fill out the application as if applying for the first time*. If you had DACA and **your grant of DACA was cut short by DHS** (i.e., DHS terminated your DACA), you can apply to renew your DACA, but you have to complete the DACA application *as if you were applying for the first time*. Make sure to follow *all the instructions for initial applicants on **Form I-821D, Consideration of Deferred Action for Childhood Arrivals***, and to submit evidence demonstrating that you meet each [DACA eligibility guideline](#).⁷ Information about the requirements and process for submitting a first-time application is available at www.nilc.org/faqdeferredactionyouth/. When you fill out Part 1 of the Form I-821D, be sure to *include the date your DACA expired*. As part of your application, you also must complete and submit **Form I-765, Application for Employment Authorization**; and **Form I-765WS Worksheet**. (The I-765 forms are available from <https://www.uscis.gov/i-765>.)

If your DACA **expired on or after September 5, 2016**, you may submit a DACA renewal application. To file a renewal application, you must fill out and submit these forms: **Form I-821D, Consideration of Deferred Action for Childhood Arrivals**; **Form I-765, Application for Employment Authorization**; and **Form I-765WS Worksheet**.

NOTE: You should use the *latest edition of each form* to avoid any delays in the processing of your application. To make sure that you’re using the latest edition of each form, look for the following in the bottom left corner of each page of the respective form:

- Form I-821D 01/09/17 Y
- Form I-765 05/31/18
- Form I-765WS 05/31/18

The following information applies to you if your DACA expired on or after September 5, 2016: When you submit a renewal application, you must fill out all sections of the forms and answer all the questions *except* those designated “For Initial Requests Only.” You must also submit any *new* documents relevant to your *removal proceedings* or *criminal history* that you have not submitted previously. Make sure to provide the date your prior DACA expires or expired in the appropriate box on Part 1 of Form I-821D.

USCIS requires that you send a copy of the front and back of your last employment authorization document, as well as two passport-type photographs taken within 30 days of filing your renewal application.⁸

USCIS asks that no additional documents be sent, not even proof that you have resided continuously in the U.S. since you first received DACA. USCIS advises that you keep all documents that provide evidence that you meet all the guidelines. USCIS reserves the right to ask you for additional information, documents, and statements to verify information on your

⁷ See note 2, above.

⁸ See the instructions for Form I-765, available at <https://www.uscis.gov/i-765>.

DACA renewal application. USCIS also reserves the right to contact government agencies and others to verify the information provided in the application.

NOTE: If your DACA was granted initially by U.S. Immigration and Customs Enforcement (ICE) and not USCIS, you must fill out *all* the sections and answer *all* the questions on the forms and submit *all supporting documentation* as if you were filing an initial request. The completed forms and supporting documentation must then be submitted to USCIS.

■ What is the fee for the DACA renewal application?

When you apply to renew DACA, you must include the fee of \$495 made out to “U.S. Department of Homeland Security.” In very limited circumstances, applicants may be exempted from having to pay the fees.⁹

■ Where should I send my DACA renewal application?

Regardless of whether your *initial* DACA request was adjudicated by ICE or by USCIS, you must submit your application for *renewal* to USCIS. Where, specifically, you must send your application depends on where you live. Check USCIS’s Direct Filing Addresses for Form I-821D, Consideration of Deferred Action for Childhood Arrivals for the correct mailing address.¹⁰ We highly recommend sending the application by certified mail, to track when it arrives at the USCIS Lockbox, and including in your application packet Form G-1145, E-Notification of Application/Petition Acceptance, so you’ll be notified once USCIS accepts your application.

■ If I have been arrested or convicted of an offense, or if I have had other interactions with law enforcement since receiving DACA, what should I do?

It is a risk to apply. Speak with an attorney or a BIA-accredited representative about your case. Due to how the government’s immigration enforcement priorities changed in January 2017 and the possibility that the current renewal process may be available only for a limited time, it is best to speak with an immigration expert before applying. Even if the incident happened before you applied and received DACA in the past and you revealed it in previous applications for DACA, the government’s immigration enforcement priorities have changed and if you reapply now you are at risk of being referred to ICE.

■ Can someone with a deportation order, voluntary departure, or an administratively closed case apply for DACA renewal?

It is a risk to apply. Speak with an attorney or a BIA-accredited representative about your case. Due to how the government’s immigration enforcement priorities changed in January 2017, if you had any interaction with an immigration judge or immigration court, you should speak with an immigration expert. Even if these events happened before you applied and received DACA in the past and you revealed them in previous applications for DACA, the government’s immigration enforcement priorities have changed and if you reapply now you are at risk of being referred to ICE.

⁹ www.uscis.gov/forms/forms-and-fees/consideration-deferred-action-childhood-arrivals-fee-exemption-guidance.

¹⁰ <http://www.uscis.gov/i-821d-addresses>.

■ **My last renewal application was rejected because I did not meet the October 5, 2017, deadline. Can I still apply to renew?**

YES. You can apply for renewal even if your last application was rejected specifically due to not meeting the October 5, 2017, deadline.

■ **How long will it take USCIS to process my DACA renewal application?**

We can't know for certain how long it will take USCIS to process your application, but we know from reports by DACA applicants that USCIS lately has been processing cases in a timely manner, within its initial goal of 120 days.

IMPORTANT NOTE FROM THE AUTHORS

WE WANT TO EMPHASIZE that, regardless of what happens in the DACA-related court cases, Congress needs to act to pass the Dream Act. President Trump's decision to terminate DACA created panic and left millions of immigrant youths' lives in limbo. Attorney General Jeff Sessions's announcement about terminating DACA, followed by DHS's guidance on who could apply for renewal and by when, created confusion and widespread anxiety within the immigrant community.

Although the implementation of orders from federal courts in California, New York, and Washington, DC, allowing people to apply for DACA renewal have helped bring some relief to immigrant youth, many are still worried that the option to apply to renew their DACA may be taken away at any time. This is no way to live. Immigrant youth deserve stability, peace of mind, and protections from detention and deportation, which only a permanent solution such as the Dream Act can provide.

