



DACA UPDATE

By Krsna Avila, Veronica Garcia and Sally Kinoshita

The purpose of this advisory is to provide service providers with an update on the status of Deferred Action for Childhood Arrivals (DACA) program and how to counsel clients now.

I. Current Status of the DACA Program

For now, anyone who has or has had DACA can continue to renew their DACA. Those who have never had DACA are not eligible for DACA now.

The fate of DACA is complicated by the fact that it is being litigated in four different parts of the country. Below is a summary overview of the litigation.

- **September 5, 2017:** The Trump administration terminated the DACA program.
- **January 9, 2018:** A San Francisco federal judge ordered USCIS to accept DACA renewals ***nationwide*** but did not restart initial DACAs or advance parole. This case is currently on appeal at the U.S. Court of Appeals for the Ninth Circuit Court which includes the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.
- **January 13, 2018:** USCIS began accepting DACA renewals again.
- **February 13, 2018:** A New York federal judge also ordered DACA renewals to resume and did not restart initial DACAs or advance parole. The government appealed the decision to the U.S. Court of Appeals for the Second Circuit. The parties have until October 5, 2018 to submit supplemental briefs, and no hearing date has been set. The Second Circuit includes the states of Connecticut, New York and Vermont.
- **April 24, 2018:** A District of Columbia federal judge originally ruled that the Trump administration must restart the DACA program in its entirety. However, because this case is currently on appeal at the U.S. Court of Appeals for the District of Columbia Circuit, on August 17, 2018, the judge stayed part of his decision and did not require the government to accept initial DACA applications or DACA advance parole requests. At the same time, he ruled that the government must continue to accept DACA renewals while the case is on appeal.
- **August 8, 2018:** A Texas federal judge heard a case in which several states seek to shut down the DACA program entirely. The judge is still considering the arguments. The expectation is that he will order the program to be shut down. The case is then likely to be appealed to the U.S. Court of Appeals for the Fifth Circuit which includes the states of Louisiana, Mississippi, and Texas.

It is hard to predict the outcome of all the pending litigation. There are a number of possible scenarios that could happen:

- DACA renewals could continue to be accepted for some time while the litigation continues;
- The entire DACA program could be terminated throughout the country based on the Texas judge's ruling; or
- The DACA program could be terminated in some regions of the country based on the Texas judge's ruling.

The litigation will almost certainly eventually head to the U.S. Supreme Court. With only eight justices currently on the Supreme Court, the timing and outcome of the DACA litigation is very uncertain.

II. What to Tell Clients

Everyone who has or has had DACA should continue to renew their DACA.

- If their DACA has not expired or been terminated:
 - If their DACA expires within the next 150 days, they should **apply to renew ASAP**.
 - If their DACA expires between 151-365 days from when they are thinking of renewing, they should apply to renew ASAP and are likely to have it adjudicated despite having an expiration date that far into the future.
 - If their DACA expires more than a year from when they are thinking of renewing, it is less clear whether USCIS will adjudicate their case if they renew that far in advance of their DACA's expiration. They should still make sure to renew before the DACA program ends, and we have heard of cases that were successfully adjudicated more than a year before the expiration date.
- If their DACA has expired or was terminated:
 - If their DACA expired more than a year before the day they are renewing, they will need to submit their renewal as an initial DACA application with all the documents needed to prove initial eligibility for DACA. **They should apply to renew ASAP**.
 - If their DACA expired less than a year before the day they are renewing, they can submit a DACA renewal as others with unexpired DACA do. **They should apply to renew ASAP**.

III. What Factors to Consider in Deciding When and If to Renew DACA

Those who apply more than a year in advance of their DACA expiration may have their DACA renewed for two more years *starting on the DACA renewal approval date*, and thereby cut short the total amount of time they can have DACA.

Example: Ginger's DACA expires January 15, 2019. If the DACA program were continuing indefinitely into the future, she might expect that she could renew her DACA, and it would be valid until January 14, 2021. However, because she is worried that the DACA program will end, she filed her DACA renewal application early, in March 2018. It was adjudicated in June 2018 and renewed for an additional two years from that adjudication date, with a new expiration date of June 20, 2020. Therefore, although her DACA was renewed, it was not renewed to January 14, 2021.

Those who apply more than a year in advance of their DACA expiration and have it denied on that basis or have it denied for another reason – and may lose the filing fee amount as a result.

Practice Tip: To offset the risk of your client losing \$495 in filing fees in any circumstance, look for opportunities to have DACA fees covered by one of the fee assistance options listed on the [Ready California website DACA renewal resources page](#).

Those who remain in DACA “status” and/or file to renew before any litigation cancels the program *may* be grandfathered in to the program or eligible for special access to future benefits programs.

Those who apply to renew and receive a denial will not be at risk of receiving a Notice to Appear (NTA) unless they meet the criteria for an NTA as set forth in the [November 2011 NTA Guidance](#).

IV. What Should People Who Have Never Had DACA Do Now?

Every undocumented person should continue to save money and documents that could be helpful in a future immigration case.

The DACA litigation is complex and ongoing, so it is difficult to predict when or if initial DACA applications will be accepted again. Nonetheless, any future immigration benefit program or deportation case may require filing fees and require certain types of documentation. Therefore, it is a good idea for every undocumented person to prepare for either possibility.

Money saved can be useful for government filing fees to apply for an immigration program, legal fees to pay for the services of an attorney or accredited representative, and even bond for release from detention.

Documents can be useful to show eligibility for an immigration program or legal defense. The kind of documents that may one day prove useful and should be saved include evidence of:

- **Physical presence in the United States:** lease, mortgage or rental payments, records of medical or dental visits, vaccination records, benefits receipts, remittance receipts, court records
- **Education:** transcripts, attendance records, certificates of completion, report cards, diplomas
- **Work history:** pay stubs, time sheets, letters from employers
- **Payment of taxes:** tax returns, tax transcripts
- **Community Involvement:** membership records, attendance records, volunteer hour logs, letters from group leaders showing participation in community groups, religious institutions, volunteer projects
- **Family relationships:** birth certificates, marriage certificates, divorce decrees, adoption papers
- **Being a good person:** recognition awards, letters from friends, coworkers, neighbors