



Immigrant Legal Services Center

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University of California Immigrant Legal Services Center (“Center”) Deferred Action for Childhood Arrivals (“DACA”) Post-Northern District of California Injunction Frequently Asked Questions (FAQ) Current as of March 29, 2018

These FAQs 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 daily. If you have any questions about your case, please contact a Center attorney for a consultation as soon as possible.

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 I thought DACA was rescinded.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

On January 9, 2018, a federal judge in Northern California ordered the U.S. government to temporarily resume accepting DACA renewal applications for anyone who has ever been granted DACA.¹ This court order temporarily blocks the U.S. government’s decision to terminate the DACA program, which happened on September 5, 2017. The order applies nationwide. On February 13, 2018, another federal judge in New York made a similar order that also required the U.S. government to temporarily continue accepting DACA renewal applications.

On February 26, 2018 the Supreme Court denied the U.S. government’s request to make a decision on the legality of the first temporary order allowing DACA renewals to continue. This means that **the U.S. government will continue accepting and processing DACA renewal applications until a court decides to lift the injunction in either the California or New York lawsuits.** *Please see Question 3 for more information on timing.*

On March 5, 2018, another federal judge in Maryland ruled that the Trump Administration has the authority to rescind DACA. However, the two injunctions from the California and New York cases remain in effect nationwide despite this Maryland decision. This means that, as of this writing, the Maryland decision should not affect the ability to apply for DACA renewal.

The Ninth Circuit Court of Appeals granted the government’s request to speed up parts of the hearing process for the California DACA case and the hearing is scheduled for May 15, 2018. It is not clear how long after this oral argument a decision will be made about whether or not DACA Renewals will continue to be accepted. Even if there is a decision in May that stops DACA Renewals from being accepted, the nationwide injunction in the New York case should stay in effect and allow USCIS to continue accepting Renewals.

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

Yes. [USCIS updated its website](#) and is again accepting the same forms and filing fees for DACA Renewal as prior to September 5th, 2017. To renew your DACA you will need submit the following:

¹ Regents of Univ. of Cal. v. United States Dep't of Homeland Sec., No. C 17-05211 WHA (N.D. Cal. Jan. 9, 2017).

- [Form I-821D](#)
- [Form I-765](#)
- [Form I-765WS](#)
- A front and back copy your current Employment Authorization Document (EAD)
- Check or money order for \$495 made to "U.S. Department of Homeland Security"²
- 2 passport-style photos
- Any other documents as required by the instructions associated with each form.

3. When should I renew my DACA considering what is going on in the courts?

You can still submit your request to renew your DACA until the courts decide otherwise, so long as you remain eligible for DACA. There is no way for us to know for sure how much time you have left to file your request to renew your DACA. Because the DACA cases will now go through the normal appeals process instead of being reviewed by the Supreme Court, there may not be another decision affecting DACA Renewals for several months (possibly even a year).

We still recommend that you file your renewal request at least 120 days (about 4 months) before your DACA expires. You do not have to wait until 150 days (5 months) before your DACA expiration date to submit your request to renew DACA. Regardless of when your DACA expires, USCIS will process your renewal request. However, you may not want to file your renewal request now if your DACA will not expire for a very long time. Below are some factors to consider if your DACA expiration date is beyond 150 days. We recommend that you talk this through with a Center attorney:

Pros:

- If you get your application in before any further movement in courts that terminates the option to renew, there is a higher chance that your renewal request will be processed.
- If USCIS approves your renewal request, you will have your DACA and EAD (work permit) at least beyond 2019 and into 2020 rather than them expiring later this year or in 2019.

Cons:

- If USCIS rejects your application for being filed too early, then you may lose your \$495 filing fee. However, we have not seen this happen since the January 9th injunction, even for DACA renewals where the expiration dates are early 2019.
- If USCIS processes your renewal request normally, then your new EAD will begin its 2-year period from the approval date. This means that your new EAD may not allow you to work with authorization for a full 2 years after your current EAD expires:
 - *Example: Your DACA/EAD expires in January 2019. You decide to submit your renewal request this month (March 2018). Your case is very simple and it only takes USCIS a month to approve your request. Your new DACA/EAD will be valid from April 2018 to April 2020, not January 2019 to January 2021.*

4. Can I apply for DACA now if I have never applied before?

No. In its newly posted guidance, USCIS has stated that it will not accept initial DACA application from potential first-time applicants.³

² See <https://www.uscis.gov/forms/our-fees>. Note that the total DACA filing fees are \$495: \$410 for Form I-765 and \$85 for the Biometric Services fee.

³ See <https://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction>.

5. Can I apply for DACA now if it has been more than one year since my last DACA expired?

Yes. If you have received DACA before but it expired *before* September 5, 2016 and you did not renew, then you may renew your expired DACA by filing an initial DACA application with supporting documents that establish you are eligible for DACA. Please consult with a Center attorney for support with your DACA application.

If your DACA expired *on or after* September 5, 2016 but you did not renew, then you may renew your expired DACA by filing a renewal DACA application (please see Question 2).

6. Have 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, that does not mean that it is safe for everyone to renew their DACA. 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 police or the courts, 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 since your last DACA application.

7. Can I apply for Advance Parole?

No. In its newly posted guidance, USCIS states that it will not accept or approve requests for Advance Parole. If you apply for Advance Parole now, your application will be rejected and you may lose your filing fee.⁴

8. Can I get help with filing for my DACA Renewal?

Yes! Please contact your campus attorney to get help.

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 is important to know when considering travel within the U.S.?

While flying, you could be asked by airport security to provide proof of your immigration status. Airports are “ports of entry” into the U.S. – there are Customs and Border Protection (CBP) officers at airports, and constitutional protections are limited at ports of entry. U.S. domestic flight security is governed by the Transportation Safety Administration (“TSA”), which is part of the Department of Homeland

⁴ See <https://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction>.

Security. If you are traveling by air or land within 100 miles of any U.S. border, CBP officers have certain additional powers and can operate immigration checkpoints. Please see the American Civil Liberties Union's (ACLU) [fact sheet](#) on risks present within the “100-mile border zone.”⁵

If you currently have DACA and it has not expired, you should be able to travel within the U.S. via plane or other forms of transportation using a current, valid California state ID card, driver's license or your EAD card. You may be asked questions about your immigration status if you use a document that shows your country of citizenship (such as a non-U.S. passport or EAD card). Please note that an AB 60 license is **not** accepted as identification for federal purposes, including as identification for air travel.⁶

11. 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 false 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 - 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.⁷ To read more about your rights, please see the National Immigration Law Center's resources.⁸

12. 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.⁹

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.*

⁵ Available at <https://www.aclu.org/other/constitution-100-mile-border-zone?redirect=constitution-100-mile-border-zone>.

⁶ See https://www.ilrc.org/sites/default/files/resources/ab_60_4_27_15.pdf.

⁷ Available at <https://www.ilrc.org/red-cards> (available in English and Spanish).

⁸ 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/>.

⁹ Available at <https://www.ilrc.org/family-preparedness-plan>.

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