

FREQUENTLY ASKED QUESTIONS

The Obama Administration's DAPA and Expanded DACA Programs

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This FAQ answers questions mainly about the **DAPA** and **expanded DACA** programs, both of which were announced on November 20, 2014, by President Obama.

The FAQ available at www.nilc.org/dacarenewalprocess/ answers questions that are specifically about applying to **renew** DACA.



On November 20, 2014, President Barack Obama announced that the U.S. Department of Homeland Security (DHS) would not deport certain undocumented parents of U.S. citizens and parents of lawful permanent residents (LPRs). The president also announced an expansion of the **Deferred Action for Childhood Arrivals (DACA)** program for youth who came to the United States as children. Under a directive from the secretary of DHS, these parents and youth may be granted a type of temporary permission to stay in the U.S. called “deferred action.” These programs are expected to help up to 4.4 million people, according to the Department of Homeland Security.

Currently, U.S. Citizenship and Immigration Services (USCIS) is not accepting applications for the expanded DACA program for youth or the **Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA)** program. A federal district court in Texas has [issued an order](#) that temporarily blocks the DAPA and expanded DACA programs from being implemented.¹ This means that people will not be able to apply for DAPA or expanded DACA until a court issues an order that allows the initiatives to go forward.

However, USCIS continues to accept renewal applications or initial applications from people who qualify under the [DACA criteria announced in June 2012](#).²

Much of the information about the DAPA and expanded DACA programs presented in this FAQ is based on what we know about the existing DACA program. We will learn more details (and revise the FAQ) as USCIS issues more information about the programs, including application forms and instructions.

¹ www.nilc.org/txvusdistrictdecision/.

² www.nilc.org/daca/.

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WARNING: Do NOT take advice about your immigration case from a notary public or an immigration consultant. **Contact ONLY** a qualified immigration lawyer or an accredited representative for legal advice about your case. A directory of legal service providers in your area is available at www.iamerica.org/find-legal-help. If you encounter notario fraud, report it at www.stopnotariofraud.org.

■ What is deferred action?

Deferred action is a kind of administrative relief from deportation that has been around a long time. Through it, DHS authorizes a non-U.S. citizen to remain in the U.S. temporarily. The person may also apply for an employment authorization document (a work permit) for the period during which he or she has deferred action.

Deferred action is granted on a case-by-case basis. Even if you meet the requirements outlined below, DHS will still have to decide whether to grant you deferred action. Deferred action granted under DAPA and the expanded DACA is valid for three years and can be renewed.

A grant of deferred action is *temporary*. However, a person granted deferred action is considered by the federal government to be lawfully present in the U.S. for as long as the grant of deferred action status.

■ Who is eligible for the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program?

To be eligible for deferred action under DAPA, you must:

- Be the parent of a U.S. citizen or lawful permanent resident.
- Have continuously lived in the U.S. since January 1, 2010.
- Have been present in the U.S. on November 20, 2014. It's also likely that you will need to be present in the U.S. every day from Nov. 20, 2014, until you apply for DAPA.
- Not have a lawful immigration status on November 20, 2014. To meet this requirement, (1) you must have entered the U.S. without papers, or, if you entered lawfully, your lawful immigration status must have expired before November 20, 2014; and (2) you must not have a lawful immigration status at the time you apply for DAPA.
- Have not been convicted of certain criminal offenses, including any felonies and some misdemeanors.

■ Who is eligible for the expanded Deferred Action for Childhood Arrivals (DACA) program?

To be eligible for the expanded DACA program, you must:

- Have come to the United States before your sixteenth birthday.
- Have continuously lived in the U.S. since January 1, 2010.
- Have been present in the U.S. on June 15, 2012, and on every day since August 15, 2012.
- Have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or "be in school" on the date that you

submit your deferred action application. See our [DACA FAQ](#) for more information about meeting the “be in school” requirement.³

- Have not been convicted of certain criminal offenses. See our [DACA FAQ](#) for more information.

■ How do I apply? When can I apply?

Even if you are eligible for DAPA or expanded DACA, *you cannot apply for them yet!* A federal district court in Texas has issued an order that temporarily puts both programs on hold.

There is currently no form or official instructions for submitting a request for DAPA or expanded DACA.

You can [subscribe](#) to receive email updates from USCIS when more information is available on their website.⁴ And you can visit www.nilc.org/immigration-reform-and-executive-actions/ to get more information from the National Immigration Law Center and subscribe to our emailed updates. (Subscribe to the “Immigration Issues” email list.)

■ Will USCIS conduct a background check as part of my DAPA or DACA request?

Yes. These checks involve checking the biographic and biometric information that you provide against a variety of databases kept by the federal government.

■ What fees will be associated with the DAPA application?

The application fee is \$465, which consists of a \$380 fee for the employment authorization application and an \$85 fee for fingerprints. We don’t yet know whether fee waivers will be available. However, fee exemptions will be available in very limited circumstances.

■ What fees will be associated with the expanded DACA application?

The application fee is \$465, which consists of a \$380 fee for the employment authorization application and an \$85 fee for fingerprints. Fee waivers are not available. However, fee exemptions will be available in very limited circumstances.

■ How do I prove that I qualify for DAPA?

Specific instructions about what documents will be acceptable are pending. Here are some ideas for documents you can begin to gather now.

To prove that you qualify for DAPA, you will need to establish your identity, your relationship to a U.S. citizen or lawful permanent resident son or daughter, and your continuous residence in the U.S. since January 1, 2010.

In order to prove that you have lived in the U.S. continuously since January 1, 2010, you should gather documents such as financial records (lease agreements, phone bills, credit card bills), medical records, and school records (diplomas, GED certificates, report cards, school

³ www.nilc.org/faqdeferredactionyouth/.

⁴ https://public.govdelivery.com/accounts/USDHSCIS/subscriber/new?topic_id=USDHSCIS_74.

transcripts). As a rule of thumb, consider gathering at least one document for each 12-month period since January 1, 2010, until the time you submit your request for deferred action.

If you do not have documents to establish that you were in the U.S. for a significant part of the period between January 2010 and the present time (in other words, if there is a gap in your documentation), consider gathering affidavits from at least two people who have personal knowledge that you were in the U.S. during that gap.

In order to prove that you have a son or daughter who is a U.S. citizen or lawful permanent resident, you can provide copies of your U.S. citizen son's or daughter's birth certificate or passport, naturalization certificate, or green card.

If you have ever been arrested, you should request a copy of your criminal history from your state or from the Federal Bureau of Investigation (FBI). You should also request, from each court in which you had a criminal case, a letter describing what the judge ultimately decided in each case. This letter may be referred to as a "disposition letter" or "certificate of disposition."

If it's possible that you have an outstanding warrant, we suggest that you do not go in person to request any of these records. If you know you have or even think you may have an outstanding warrant, you should consult with an attorney about what would be the best way to proceed.

■ Will I have to show that I have filed federal income tax returns in order to be eligible for DAPA?

No. There is no requirement that, at the time you file for DAPA for the first time, you show proof of having filed income tax returns. If you have been filing tax returns, you can submit them as evidence to show that you have been continuously present in the U.S. Showing that you have filed tax returns may also be a positive discretionary factor in your application. However, we expect that in order to renew their DAPA, renewal applicants will have to show that they have filed their tax returns for at least the three years they have had DAPA.

All workers, regardless of what immigration status they have, must comply with the rules and regulations of the Internal Revenue Service (IRS), the U.S. tax agency. The administration has emphasized that DAPA recipients, once they have received valid employment authorization, will be able to pay their fair share of taxes. It is therefore strongly recommended that DAPA applicants continue paying their taxes or begin to if they aren't already paying. If you don't have a Social Security number, you can file your tax returns with an Individual Taxpayer Identification Number (ITIN). Our [ITIN fact sheet](#) has more information about this process.⁵

■ How do I prove that I qualify for expanded DACA?

To prove that you qualify for expanded DACA, you will need to establish your identity and continuous residence in the U.S. since January 1, 2010.

In order to prove that you have lived in the U.S. continuously since January 1, 2010, you must provide documents that prove you were in the U.S. during that period. It is important

⁵ www.nilc.org/itinfo/.

that you gather documents such as financial records (lease agreements, phone bills, credit card bills), medical records, and school records (diplomas, GED certificates, report cards, school transcripts).

You can gather the same type of documents to prove that you were physically in the U.S. on June 15, 2012.

As a rule of thumb, consider gathering at least one document for each 12-month period since January 1, 2010 until the time you submit a request for deferred action. If you do not have documents to establish that you were in the U.S. for a significant part of the period between January 2010 and the present time (in other words, if there is a gap in your documentation), consider gathering affidavits from at least two people who have personal knowledge that you were in the U.S. during that gap.

If you have ever been arrested, you should request a copy of your criminal history from your state or from the Federal Bureau of Investigation (FBI). You should also request, from each court in which you had a criminal case, a letter describing what the judge ultimately decided in each case. This letter may be referred to as a “disposition letter” or “certificate of disposition.”

If it’s possible that you have an outstanding warrant, we suggest that you do not go in person to request any of these records. If you know you have or even think you may have an outstanding warrant, you should consult with an attorney about what would be the best way to proceed.

■ What if some of my documents are in Spanish or another language?

All documents that you submit to USCIS that are not in English have to be translated into English. You can do the translation yourself if you speak both English and the language the document is written in. At the end of each document you translate from another language into English, you must submit a dated and signed statement certifying that you are competent to translate from that language into English. There may be specific instructions for how to certify that you are competent to do the translation in the forms for expanded deferred action.

■ I was arrested and charged with a crime a long time ago. Can I still apply for relief?

Possibly. The government will conduct a background check and you will need to reveal this incident on your application. You will not be eligible if you have been convicted of a felony or certain “significant misdemeanors,” or of three or more misdemeanors, or if USCIS determines that you are a risk to national security or public safety.

■ What is considered a “significant misdemeanor”?

A misdemeanor is a crime for which the maximum term of imprisonment is one year or less but more than five days. A single “significant misdemeanor” will make you ineligible for deferred action.

DHS considers the following to be “significant misdemeanors”: 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 (these offenses are considered “significant misdemeanors” regardless of the length of the sentence that is imposed).

For offenses not listed above, a “significant misdemeanor” is one for which you were sentenced to more than 90 days in custody. This does not include a suspended sentence.

■ **What types of offenses count towards the “three or more misdemeanor offenses”?**

Any misdemeanor (not meeting the definition of “significant misdemeanor”) for which you are sentenced to at least one day in custody counts toward the “three or more misdemeanor offenses.”

DHS will not count minor traffic offenses as misdemeanors, unless they are drug- or alcohol-related.

DHS will not count immigration-related offenses created by state immigration laws as being misdemeanor offenses or felonies. For instance, Arizona, Alabama, and other states have passed laws that make it a crime for undocumented people to engage in many everyday actions; these crimes will not be counted as felonies or misdemeanors.

DHS will look at all the circumstances in a case to decide whether a person who has committed a criminal offense will be given deferred action.

■ **If I am granted deferred action, for how many years will I have it?**

Deferred action under expanded DACA or DAPA will be granted for a renewable period of three years. The work permit you receive will also be for a renewable period of three years.

■ **If I currently have a work permit through DACA that’s good for two years, will I be able to get one that’s good for three years?**

USCIS is exploring how to extend the two-year work permit that’s currently issued to DACA recipients so that it’s good for three years. We’ll provide more information about this issue when it becomes available.

■ **If I am currently detained by U.S. Immigration and Customs Enforcement (ICE), or under an “order of supervision,” how do I get deferred action under DAPA or expanded DACA?**

If you are in immigration detention or under an order of supervision and believe you may qualify for DAPA or expanded DACA, you should alert the appropriate staff in your facility as described in the “orientation handbook” ICE may have provided you. You may also call the ICE Community and Detainee Helpline at 1-888-351-4024 (staffed 8 a.m.- 8 p.m., Mon.- Fri.) or the Law Enforcement Support Center hotline at 1-855-448-6903 (staffed 24 hours a day, 7 days a week), or send an email message to ERO.INFO@ice.dhs.gov.

■ **I have a deportation case but I am not detained. How do I get DAPA or expanded DACA?**

People who are not detained will be able to submit a deferred action request to USCIS even if they are currently in removal proceedings, have a final removal order, or have a voluntary departure order. A request should include evidence that you are eligible for deferred action under the criteria outlined above.

■ **If I request DAPA or DACA, will the information I provide be kept confidential?**

The information in your deferred action request, including information about family members and guardians, will not be shared with ICE or U.S. Customs and Border Protection (CBP) for the purpose of deportation except for when the request contains evidence of fraud related to the request, or of a criminal offense, or of a threat to public safety or national security.

However, the information in your request may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than deportation. Some of the reasons for sharing this information include identifying or preventing fraudulent claims, national security purposes, or investigating or prosecuting a criminal offense.

■ **If my DAPA or DACA request is denied, will I be placed in deportation proceedings?**

If you are denied DAPA or DACA, USCIS will refer your case to ICE only if it involves a criminal offense, fraud, or a threat to national security or public safety. It is against USCIS policy to refer cases to ICE where there is no evidence of fraud, a criminal offense, or a threat to public safety or national security, unless there are exceptional circumstances.

DHS has issued a new memo describing which people are a “priority” for deportation. Our [FAQ on changes to immigration enforcement](#) provides a list of deportation priorities.⁶ People who don’t fit the new priority criteria are not priorities for removal.

*Before you request deferred action, however, it is **really important** that you first consult with a reputable attorney or legal services program if you have ever been arrested or convicted of any kind of crime.*

■ **What will happen if the DAPA and DACA programs do not get renewed in three years? Will I be deported?**

Submitting your information to USCIS can be scary, especially if you have never let the government know that you are in the U.S. We don’t know whether the program will be renewed in three years. We *do* know that government does not have the resources to deport every undocumented person in this country. Remember that if you are granted DAPA or DACA, USCIS has decided that you are a “low priority” for deportation.

Ultimately, you will have to decide whether the benefits of DAPA and DACA — a work permit, Social Security number, and ability to travel outside the U.S. — are worth applying for. We suggest that you talk to an attorney or legal services program about particular concerns you might have, especially if you have been arrested before.

■ **Can I travel abroad under deferred action?**

Yes, you may travel abroad, but only if you apply for and are granted “advance parole.” Advance parole is permission from DHS to leave the U.S. for certain purposes, such as visiting a relative who lives abroad and is sick. We expect that, like DACA recipients, DAPA recipients will be able to apply for advance parole. NILC will distribute further information

⁶ www.nilc.org/administrative-relief-immigration-enforcement/.

about the advance parole application process for deferred action recipients when it is available.

■ Will I be able to get a driver's license?

State driver's license requirements for immigrants, and the documents accepted as proof of eligibility, vary by state. Since a grant of deferred action is listed in the federal Real ID Act as a basis of eligibility for a license that is recognized for certain federal purposes, there are strong arguments for states to grant driver's licenses to people granted deferred action.

Currently, otherwise-eligible DACA recipients can get a driver's license in every state except Nebraska. Litigation challenging Nebraska's denial of driver's licenses to DACA recipients is ongoing. In January 2015, a federal court ordered Arizona to stop denying driver's licenses to people with DACA. Although Arizona's governor has appealed this order, it remains in place pending the appeal.

Ten states — California, Colorado, Connecticut, Illinois, Maryland, Nevada, New Mexico, Utah, Vermont, and Washington — as well as the District of Columbia and Puerto Rico grant driver's licenses or cards to eligible state residents, regardless of their immigration status. NILC is keeping track of any new developments in state laws, policies, and practices that affect whether DACA recipients are able to get driver's licenses. For updates, see www.nilc.org/drivers-licenses/.⁷

■ Will I be able to get a Social Security number?

Yes! Once your work permit arrives, look up your local Social Security office at www.ssa.gov. It is recommended that, when you go to Social Security to apply for your number, you also take your birth certificate and other identification documents to prove your identity.⁸

■ Will I be able to get in-state tuition?

The rules on in-state tuition for immigrants vary by state, and sometimes by college system. At least twenty states and major institutions in other states have [laws or policies allowing certain students to pay in-state tuition](#), regardless of their immigration status.⁹ Several additional states have determined that individuals granted deferred action can qualify to pay in-state tuition rates, if otherwise eligible.

You will need to check your state's or college's laws and policies to determine whether residents who have deferred action are eligible to pay in-state tuition. In some states, students must have been lawfully residing in the state for at least one year in order to qualify for in-state tuition.

Although there are strong arguments for allowing students with deferred action to pay in-state tuition rates, it may take advocacy to ensure that your state recognizes deferred action as an eligible category and accepts your documents for in-state tuition purposes.

⁷ See also www.nilc.org/wp-content/uploads/2016/06/DACA-and-drivers-licenses-2013-06-19.pdf.

⁸ www.socialsecurity.gov/pubs/deferred_action.pdf.

⁹ www.nilc.org/basic-facts-instate/ and www.nilc.org/eduaccess toolkit/.

■ If I am granted DAPA or expanded DACA, will I be eligible for health care and other public benefits?

Generally, no. People who get deferred action will be considered “lawfully present.” Under current law, many categories of lawfully present individuals are not eligible, generally, for SNAP (what used to be called “food stamps”), TANF (what used to be called “welfare”), SSI (Supplemental Security Income), CHIP (the Children’s Health Insurance Program) or Medicaid. People with deferred action are eligible only for Medicaid emergency services.

However, states have the option to provide, with their own funds, CHIP and Medicaid to children under age 21 and/or to pregnant women. The Obama administration specifically excluded people who obtain deferred action from participating in Obamacare (health insurance, including subsidies, available under the federal Affordable Care Act).

■ How is DAPA or expanded DACA different from the DREAM Act or comprehensive immigration reform legislation that has been proposed in the past?

The DAPA and expanded DACA announcements came from DHS, which is one of the agencies within the federal government’s executive branch. DHS has the power to make certain decisions about the enforcement of immigration laws. The executive branch does not have the power to create a path to permanent lawful status and citizenship. Only Congress, through its legislative authority, can grant that.

Deferred action is only a temporary fix. We still need to fight for commonsense immigration reform to be enacted so all aspiring Americans can have a permanent solution.

■ Where can I get more information?

For more information, please visit www.nilc.org/immigration-reform-and-executive-actions/ or see our list of the “[top 10 things you can do to prepare](#)” for DAPA and expanded DACA.¹⁰ It will tell you what documents you should be gathering to support your application.

You also can find more resources at www.iAmerica.org and www.adminrelief.org. And keep visiting NILC’s website to read our FAQs and other explanations about DAPA and expanded DACA program as they become available. Also, we’ll [tweet](#) and post notices on [Facebook](#) about new resources we post and new developments as they occur.

This document is a work in progress and will be updated as DHS releases more details about the deferred action process.

NOTE: This FAQ contains general information and **is not legal advice**. Every case is different.

Do NOT take advice from a notary public or an immigration consultant. **Contact ONLY** a qualified immigration lawyer or an accredited representative for legal advice on your case.

For more information, contact

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¹⁰ www.nilc.org/toptenwaystoprep/.