



United We Dream
Network

FREQUENTLY ASKED QUESTIONS

The Obama Administration's Deferred Action for Childhood Arrivals

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*This FAQ answers questions mainly about applying for DACA for the **first time**.*

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



On June 15, 2012, President Barack Obama announced that the U.S. Department of Homeland Security (DHS) would not deport certain undocumented youth who came to the United States as children. Under a directive from the secretary of DHS, these youth may be granted a type of temporary permission to stay in the U.S. called “deferred action.” The Obama administration called this program Deferred Action for Childhood Arrivals, or DACA.

On November 20, 2014, President Obama announced an expansion of the DACA program.¹ However, on February 16, 2015, a federal district court in Texas issued an order that put the “expanded DACA” program on hold. The federal government appealed the order all the way to the U.S. Supreme Court, but the justices’ tie vote on the case resulted in a nondecision, leaving the Texas court’s order in place. So the expanded DACA program has not been implemented.² People cannot apply for *expanded* DACA at this time. However, people who believe they are eligible for DACA under the *pre-expansion* guidelines may still apply for DACA under those guidelines.

Currently, U.S. Citizenship and Immigration Services (USCIS) is accepting applications both from people who were previously granted DACA and now want to renew it *and* from people applying for DACA for the first time under the pre-expansion guidelines. However, we

¹ For more information, see www.uscis.gov/immigrationaction.

² For more information about this court case, see www.nilc.org/united-states-v-state-of-texas/.

This FAQ previously was titled “Frequently Asked Questions: Obama Administration’s Relief Process for Eligible Undocumented Youth.”

don't yet know if President-elect Donald Trump's incoming administration will allow the DACA program to continue. If you are considering applying for DACA before the Trump administration clarifies its policies with respect to DACA recipients and the DACA program, we suggest you read NILC's [New Questions and Answers About DACA Now That Trump Is President-Elect](#) before you decide whether to submit an application.³

Everyone who submits either an initial DACA application or a DACA renewal application must use the DACA application form ([Form I-821D](#)).⁴ (More specific information about the DACA *renewal* process is available from NILC's [FAQ: Deferred Action for Childhood Arrivals Renewal Process](#).⁵) When people apply for DACA, they apply at the same time for "employment authorization" (a work permit). If they receive DACA, they also receive a work permit that is valid for the same amount of time as their DACA.



WARNING: Do NOT take advice about your immigration case from a notary public or an immigration consultant. **Contact ONLY** a qualified immigration lawyer or a Board of Immigration Appeals (BIA)-accredited representative for legal advice about your case. A directory of legal service providers in your area is available at www.weownthedream.org/legalhelp/.



■ 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 they have 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.

A grant of deferred action is *temporary* and does not provide a path to lawful permanent resident status or U.S. citizenship. 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 is in effect.

■ Who is eligible for an initial grant of DACA?

To be eligible for deferred action under the DACA program, you must:

- Have come to the United States before your sixteenth birthday.
- Have lived continuously in the U.S. since June 15, 2007.
- Have been present in the U.S. on June 15, 2012, and on every day since August 15, 2012.

³ www.nilc.org/issues/daca/daca-after-trump-q-and-a/.

⁴ www.uscis.gov/i-821d.

⁵ www.nilc.org/dacarenewalprocess/.

- Not have a lawful immigration status on June 15, 2012. To meet this requirement, (1) you must have entered the U.S. without papers before June 15, 2012, or, if you entered lawfully, your lawful immigration status must have expired before June 15, 2012; and (2) you must not have a lawful immigration status at the time you apply for DACA.
- Be at least 15 years old at the time you apply for DACA. If you are currently in deportation proceedings, have a voluntary departure order, or have a deportation order, and are not in immigration detention, you may apply for DACA even if you are not yet 15 years old.
- Have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, be an honorably discharged veteran of the Coast Guard or U.S. armed forces, or “be in school” on the date you submit your DACA application. See below for more information about meeting the “be in school” requirement.
- Have not been convicted of a felony offense. A felony is a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year.
- Have not been convicted of a significant misdemeanor offense or three or more misdemeanor offenses. See below for more information about offenses that may disqualify you.
- Not pose a threat to national security or public safety. DHS has not defined precisely what these terms mean but has indicated that they include gang membership, participation in criminal activities, or participation in activities that threaten the U.S.

■ How do I request DACA for the first time?

If you qualify for DACA based on the *pre-expansion* requirements, you can submit your request for DACA on the USCIS [Form I-821D](#), Consideration of Deferred Action for Childhood Arrivals.⁶ You must complete and submit the *most recent version* of the form. The most recent version of the form has the following printed in the *bottom left corner of each page*:

Form I-821D 06/04/14 N

If you do not use the most recent version of the form, your application may be sent back to you.

If you do not currently have DACA and are submitting an *initial* request, make sure you fill out all the items in the form that are labeled “For Initial Requests.”

Along with the I-821D form, you must complete and file **Forms I-765** and **I-765WS** to request a work permit. Information about work permits is available on USCIS’s website at www.uscis.gov/i-765. You must show an economic need for employment in order to get the work permit.

⁶ See www.uscis.gov/i-821d. The form itself can be downloaded as a PDF from www.uscis.gov/sites/default/files/files/form/i-821d.pdf.

It is also recommended that you complete and file [Form G-1145](#) to request an electronic notification either by email or text when USCIS receives your application.⁷ Some applicants submit their applications by certified mail to ensure their delivery.

More information and instructions about where to mail your application packet are available from www.uscis.gov/i-821d. If USCIS finds that your request is complete, you will be sent a receipt notice. USCIS will then send you an appointment notice to visit an Application Support Center (ASC) in order to be fingerprinted and photographed. Once a final decision has been made on your request, USCIS will send you a written notice of the decision.

■ **Will USCIS conduct a background check as part of my 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 are the fees associated with the DACA application?**

The application fee is currently \$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. Beginning *December 23, 2016*, the total fee will increase to \$495: \$410 for the employment authorization application, plus \$85 for biometrics (fingerprints).

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

To prove that you qualify for DACA, gather documents such as financial records (lease agreements, phone bills, credit card bills, etc.), medical records, school records (diplomas, GED certificates, report cards, school transcripts, etc.), employment records, and military records.

In order to prove that you have lived in the U.S. continuously since June 15, 2007, you must provide documents that prove you were in the U.S. during that period. As a rule of thumb, consider submitting a document for each three-month period since June 15, 2007. If there is a gap in your documentation, consider submitting affidavits from at least two different 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.

⁷ Download the form from www.uscis.gov/sites/default/files/files/form/g-1145.pdf.

■ **What do I do after I gather all my materials and fill out all my forms?**

Before you submit your application, make sure you *make a copy of the complete application packet* and keep it in a safe place. You will need this packet for reference when you apply to renew your DACA and if you apply for any other form of immigration relief in the future. Being able to refer to the copy of your original application packet will help ensure that the information you provide is consistent.

■ **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. Specific instructions for how to certify that you are competent to do the translation can be found on page 3 of the [instructions](#) for completing Form I-821D.⁸ Note that the translations do not have to be notarized.

■ **I have been paying taxes using an ITIN number. Do I list that on my application?**

No. *Only* list a *Social Security* number that was *properly issued to you* by the Social Security Administration. Do *not* list an ITIN (Individual Taxpayer Identification Number)—or any other Social Security number that you may have used—on your DACA or employment authorization application forms. However, if you filed *income tax returns* using an ITIN, you may include copies of your filed income tax returns to show that you have been in the country during the years for which you filed the tax returns. If you submit copies of your income tax returns, you do not have to include with them your W-2 (Wage and Tax Statement) forms.

■ **What qualifies as “currently in school?”**

To meet the “currently in school” requirement, you must be enrolled in:

1. a public, private, or charter elementary school, junior high or middle school, high school, secondary school, or U.S. public or private college or university, including community college;
2. an alternative or homeschool program that meets state requirements;
3. an education, literacy, or career-training program (including vocational training) that has a purpose of improving literacy, mathematics, or English or is designed to lead to placement in postsecondary education, job training, or employment, and where you are working toward such placement and the program is administered by a nonprofit entity or is funded at least in part by federal, state, local, or municipal funds or is of “demonstrated effectiveness”; or
4. an education program assisting students either in obtaining a regular high school diploma or its recognized equivalent under state law (including a certificate of

⁸ www.uscis.gov/sites/default/files/files/form/i-821dinstr.pdf.

completion, certificate of attendance, or alternate award), or in passing a GED exam or other equivalent state-authorized exam.

■ 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 DACA. 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.”

- USCIS will not count minor traffic offenses as misdemeanors, unless they are drug- or alcohol-related.
- USCIS 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.
- USCIS will look at all the circumstances in a case to decide whether a person who has committed a criminal offense will be granted DACA.

■ If I am granted DACA, for how many years will I have it?

If your DACA application was approved *between November 24, 2014, and February 16, 2015*, you will have been granted DACA for a period of *three* years. The work permit you receive will also be valid for a period of three years.

If your DACA application was approved *before Nov. 24, 2014*, or is approved *after Feb. 16, 2015*, you will be granted DACA and a work permit good for a period of *two* years. Under the program’s guidelines, you will be able to apply to renew both your DACA and your work permit.

The Obama administration is committed to the continuance of the DACA program. The Trump administration or future administrations [may choose to end the DACA program](#) and

possibly invalidate all previously issued DACA and work permits before their date of expiration.⁹

More specific information about the DACA renewal process is available from NILC's [FAQ: Deferred Action for Childhood Arrivals Renewal Process](#).¹⁰

■ **I was granted DACA and received my work permit, but then I lost it. Can I get a replacement card?**

Yes, but you will have to apply for a replacement card by completing and submitting [Form I-765](#).¹¹ You will have to pay the work permit application fee (but not the biometrics fee) and check the box, near the top of Form I-765, next to "Replacement (*of lost employment authorization document*)."

■ **I received a letter saying that I was granted DACA, but I never received a work permit. How can I get my work permit card?**

If you received a letter saying that you've been granted DACA, but you didn't receive a work permit, call USCIS at 1-800-375-5283 and tell the agent who answers that you were granted DACA but didn't receive your "employment authorization document." You will have to be ready to provide information about your case, including your application receipt number.

■ **I got my work permit, but the information on the card is incorrect. Can I get a replacement card?**

Yes, but you will have to apply for a replacement card using Form I-765, unless you can prove that it is USCIS's fault that the information is incorrect. You will have to call USCIS at 1-800-375-5283 and provide them the information they request.

If you can't (or don't want to try to) prove that the error is USCIS's fault, you will have to resubmit Form I-765 along with the work permit application fee. On the form, you must check the box near the top to show that you're applying for a "Replacement (*of lost employment authorization document*)."

■ **May I now travel outside the United States?**

If you travel outside of the U.S. before your DACA application is approved, you won't be eligible for DACA. However, if USCIS approves your DACA request, you may travel outside of the U.S. if you apply for and receive *advance parole* from USCIS. Advance parole allows you to leave the U.S. for humanitarian, employment, or educational reasons. If you travel outside the U.S. without advance parole, your DACA will automatically terminate.

You can apply for advance parole on USCIS Form I-131 (www.uscis.gov/i-131). The cost of the application is currently \$360, but beginning on *December 23, 2016*, the cost will increase to \$575. Before you apply for advance parole and travel outside the U.S., consult with an attorney about whether there are factors in your case that might prevent you from

⁹ See www.nilc.org/issues/daca/daca-after-trump-q-and-a/.

¹⁰ www.nilc.org/dacarenewalprocess/.

¹¹ www.uscis.gov/sites/default/files/files/form/i-765.pdf.

being able to return to the U.S. even though you've been granted advance parole. We know that many DACA recipients have been able to travel abroad and return to the U.S. with advance parole, but each person's case is different. So it's not a good idea to leave the U.S., even if you have been granted advance parole, until you've gotten advice from an attorney.

Note that you cannot apply for advance parole and DACA at the same time. You cannot apply for advance parole until *after* you have received DACA.

If you have DACA and also have been granted advance parole to travel outside the U.S., be sure to plan your trip so that you will *return to the U.S. before your DACA expires and before January 20, 2017*, when Donald Trump is scheduled to be sworn in as president. Even if you've received advance parole, it may be harder to be admitted into the U.S. after Jan. 20, 2017, if the law changes, nor is it certain that people with DACA and advance parole will be admitted into the U.S. on or after that date.

Consult with an attorney before you apply for advance parole and travel outside the U.S.!

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

Yes—all fifty states issue driver's licenses to DACA recipients who are otherwise qualified to be issued a license. The requirements that DACA recipients and other driver's license applicants must meet, including which documents are acceptable as proof that an applicant is eligible for a license, vary by state.

■ 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. The Social Security number you are issued is assigned to you for life, even if your immigration status changes. However, whether you may use it for employment purposes is dependent on whether you have authorization from the federal government to be employed in the U.S.

■ 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, as well as major universities in other states, [already allow certain students to pay in-state tuition](#), regardless of their immigration status.¹² You will need to check your state'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 resided with lawful presence in the state for at least a year and meet other requirements established by the university in order to qualify for in-state tuition.

Although there are strong arguments for letting resident students with deferred action pay in-state tuition, 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.

¹² See www.nilc.org/basic-facts-instate/.

■ **If I am currently detained by U.S. Immigration and Customs Enforcement (ICE), how do I get DACA?**

If you are in immigration detention and qualify for DACA, you should inform your deportation officer. You cannot file a DACA request while you are in ICE custody, but if ICE releases you, you can file a request for DACA with USCIS. If your deportation officer is unavailable, contact 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.

More information about applying for DACA from detention can be found at www.ice.gov/daca.

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

People who are not detained can submit a DACA 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 DACA under the criteria outlined above.

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

According to USCIS, information provided in a request for DACA, including information about family members and guardians, will not be shared with ICE and U.S. Customs and Border Protection (CBP) for the purpose of initiating deportation proceedings unless your case involves fraud, a criminal offense, a threat to public safety or national security, or other exceptional circumstances. 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, including to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense.

This policy is based on a [2011 USCIS memo](#).¹³ Changing these policies would require that USCIS revise its memo and guidance.

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

If you are denied 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 current USCIS policy to refer cases to ICE if there is no evidence of fraud, a criminal offense, or a threat to public safety or national security, unless there are exceptional circumstances.

Before you request DACA, 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.

■ **How is DACA different from the DREAM Act that has been proposed in the past?**

The DACA announcement 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

¹³ www.uscis.gov/NTA.

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 do that.

The DREAM Act is legislation that must be passed by Congress to become law. Past DREAM Act proposals have included a path to citizenship. In contrast, a grant of DACA is only temporary and does not provide a path to lawful permanent residency or citizenship.

■ Should I request DACA?

Get informed first. Try to get as much information as you can and to attend a DACA workshop or legal clinic. After consulting with a reputable attorney or legal services program, especially if you have ever been arrested or convicted of any kind of crime, you should make your own decision about whether you want to ask for DACA.

Applying for DACA is a personal choice. Ideally, you should get legal advice from an attorney or a Board of Immigration Appeals–accredited representative before deciding to submit an application for DACA. We recommend that you also read NILC's [New Questions and Answers About DACA Now That Trump Is President-Elect](#) before deciding what to do.¹⁴

■ My DACA application has been pending for a long time. Should I be concerned?

USCIS has said it is taking, on average, 4 to 6 months to make a decision on each DACA application. Here are some ways to check what's happening with your application:

1. Use USCIS's "[Case Status Online](#)" tool.¹⁵ Go to the page, enter your application receipt number in the box, and click the "Check Status" button.
2. Create a USCIS Electronic Immigration System (USCIS ELIS) online account to track the progress of your case, at <https://myaccount.uscis.dhs.gov/>.
2. Call USCIS at 1-800-375-5283. Be prepared to be on the phone for a few hours. Inform the agent who answers that you applied for DACA, then tell the agent why you are calling. The agent should be able to direct you to a USCIS representative who can update you on your case's status.
3. Consider contacting your local congressional representative and asking them to inquire about your case. If you don't know who your representative is, you can use the U.S. House of Representatives' online "[Find Your Representative](#)" tool.¹⁶
4. As a last resort, you can submit a request for "case assistance" to the Citizenship and Immigration Services Ombudsman. But do this only after you've done everything you can to learn the status of your case using USCIS's customer service options. Information about how to get help with a pending application, as well as how to

¹⁴ www.nilc.org/issues/daca/daca-after-trump-q-and-a/.

¹⁵ <https://egov.uscis.gov/cris/Dashboard/CaseStatus.do>.

¹⁶ www.house.gov/representatives/find/.

submit a request to the Ombudsman's office for help with your case, is available at www.dhs.gov/case-assistance.

More recommendations, applicable to first time applicants, too, can be found in NILC's [Steps to Take if Your DACA Renewal Is Delayed](#).¹⁷

■ I received a Request for Evidence (RFE) from USCIS. What should I do?

When USCIS wants you to submit additional evidence to support your DACA application, it will send you an RFE. *Make sure you respond quickly* to any RFE you receive, since you must provide the additional evidence by the deadline on the RFE. Check USCIS's [Case Status Online](#) or your [USCIS ELIS](#) account to find out if your response has been received by USCIS.¹⁸ If you do not respond before the deadline, your DACA application will be denied. The RFE will tell you exactly what additional evidence you need to submit. If you are not sure how to respond, consult with an attorney or accredited representative.

■ I received a Notice of Intent to Deny (NOID) or a denial. What are my options?

If USCIS sends you a NOID, it is informing you that USCIS doesn't think you meet the requirements for DACA. If you don't respond within 33 days, your DACA application will be denied.

If your application is denied, you will receive a denial letter. This denial cannot be appealed. If you think that you in fact *do* meet the requirements for being granted DACA and you want your case to be reconsidered, you will have to reapply and pay the application fees again. However, before you reapply for DACA after having received a denial, it would be best to consult with an attorney or BIA-accredited representative.

■ Where can I get more information?

Own the Dream is a national campaign to help aspiring Americans brought to the U.S. as children take advantage of the opportunity to request DACA and work permits. NILC is proud to be a member of this important campaign, and we encourage you to visit www.weownthedream.org to [determine your eligibility](#),¹⁹ [find free or low-cost clinics and licensed reputable attorneys](#) in your area,²⁰ [review information](#) about DACA,²¹ and connect with other immigrant youth. Own the DREAM has also established a toll-free hotline (1-855-DREAM-D-1) for information about DACA, as well as a text messaging system (text "OwnIt" to 877877) by which you can receive the latest alerts and updates about DACA.

If you are in detention, you can visit ICE's DACA webpage, www.ice.gov/daca/, or call ICE's hotline at 1-888-351-4024 (8 a.m. - 8 p.m., Mon.-Fri., English & Spanish). Everyone

¹⁷ www.nilc.org/issues/daca/steps-take-daca-renewal-delayed/.

¹⁸ Case Status Online: <https://egov.uscis.gov/cris/Dashboard/CaseStatus.do>; USCIS ELIS: <https://myaccount.uscis.dhs.gov/>.

¹⁹ www.weownthedream.org/deferred-action/.

²⁰ www.weownthedream.org/legalhelp/.

²¹ www.weownthedream.org/faq/.

else can visit USCIS's DACA webpage, www.uscis.gov/childhoodarrivals, or call the USCIS hotline at 1-800-375-5283 (8 a.m. - 8 p.m. Eastern time, English & Spanish).

■ **How can I get involved with the immigrant youth movement?**

Join the Own the Dream campaign and visit www.weownthedream.org to find an immigrant youth group in your area. We encourage you to get involved and join the movement for social justice!

This document is a work in progress and will be updated as DHS releases more details about the DACA process. Check www.nilc.org/faqdeferredactionyouth/ for updates.

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.