

# New Questions and Answers About DACA Now That Trump Is President

Last updated JULY 17, 2017

**M**any of us are concerned about what could happen to the DACA program—and to DACA recipients—under President Trump’s administration.<sup>1</sup> During his campaign, Trump said that he intends to end the DACA program. But since the election, he has not said exactly if, when, or how he might do this. Nor do we know what his administration’s officials might do with the information that DACA applicants have submitted on their applications, even with the DACA program in place.

Members of the Trump administration have made statements about DACA, primarily prompted by questions from the news media, which have left DACA recipients and applicants confused. For example, the president says he loves these “kids” and will “work something out that’s going to make people happy and proud,” but he also said, as of June 16, that the DACA program is still under review.<sup>2</sup> Two recent developments have left DACA recipients with even greater uncertainty about what will happen with the program: (1) the possibility that the *Texas v. U.S.* court case may be amended to challenge DACA, and (2) the possibility that the Supreme Court may hear the *ADAC* court case and make a ruling on DACA’s constitutionality.<sup>3</sup>

Despite these uncertainties, we do know this: U.S. Citizenship and Immigration Services (USCIS) is still accepting and processing DACA applications.

Since DACA was created in 2012, anyone deciding whether to apply for it has had to weigh the benefits and risks of applying. When you provide information about yourself to immigration authorities—by submitting the DACA application—you are taking a risk. On the

<sup>1</sup> DACA is the acronym for *Deferred Action for Childhood Arrivals*. More information about DACA is available at [www.nilc.org/daca/](http://www.nilc.org/daca/).

<sup>2</sup> For more information, see articles published in NILC’s blog, *The Torch*, about recent developments; see, e.g., *Answers from Our DACA Expert* (Feb. 23, 2017), [www.nilc.org/news/the-torch/daca-expert-answers-questions/](http://www.nilc.org/news/the-torch/daca-expert-answers-questions/) and *What Does the DAPA Rescission Mean and What Implications Does It Have for DACA?* (June 23, 2017), [www.nilc.org/2017/06/23/dapa-rescission-mean-implications-daca/](http://www.nilc.org/2017/06/23/dapa-rescission-mean-implications-daca/).

<sup>3</sup> On June 29, 2017, the attorneys general of Texas and several other Republican-led states sent a letter to U.S. attorney general Jeff Sessions threatening to amend their complaint in *Texas v. U.S.* to challenge DACA’s legality unless “the Executive Branch agrees [by Sept. 5, 2017] to rescind the June 15, 2012 DACA memorandum and not to renew or issue any new DACA or Expanded DACA permits in the future....” Letter from Texas attorney general Ken Paxton, et al., to U.S. attorney general Jeff Sessions, re: *Texas, et al. v. United States, et al.*, No. 1:14-cv-00254 (S.D. Tex.), June 29, 2017, [https://www.texasattorneygeneral.gov/files/epress/DACA\\_letter\\_6\\_29\\_2017.pdf](https://www.texasattorneygeneral.gov/files/epress/DACA_letter_6_29_2017.pdf).

For information on the *ADAC* case and how it may affect DACA, see *Brewer v. Arizona Dream Act Coalition (ADAC): What Comes Next?* (NILC, June 27, 2017), [www.nilc.org/adac-what-comes-next/](http://www.nilc.org/adac-what-comes-next/).

This publication was previously titled *New Questions and Answers About DACA Now That Trump Is President-Elect*.

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other hand, having DACA has brought many benefits to the people who have it, benefits that are highlighted in the recent report [New Study of DACA Beneficiaries Shows Positive Economic and Educational Outcomes](#).<sup>4</sup> Nearly 800,000 people have chosen to apply for and have received DACA.<sup>5</sup> Many of them have, as a result, found better-paying jobs, received driver's licenses, and enjoyed other benefits.

This FAQ provides information and recommendations that may help you decide what to do with respect to DACA, given current circumstances. However, **the information in this FAQ is not legal advice**. Every person's situation is different. To get legal advice about whether you should either apply for DACA for the first time or apply to renew your DACA, you should talk to a **qualified immigration lawyer** or a Board of Immigration Appeals (BIA)–**accredited representative**.

### ■ Currently I do not have DACA, but I think I am eligible. Should I apply for it?

**If you do not currently have DACA** and are considering whether to apply for it for the first time, **we recommend** that you consult with an immigration attorney or a Board of Immigration Appeals–accredited representative before you decide whether to apply. The immigration attorney or BIA-accredited representative will be able to give you an individualized assessment of the benefits and risks of applying.

**Consult with an attorney or accredited representative.** Because no one is certain about what will happen with DACA in the future, and because immigrant communities have legitimate fears about what will happen to them under the Trump administration, at this time we recommend not submitting a first-time application for DACA unless you have consulted with and are being represented by an attorney or accredited representative. If you decide to apply, we recommend that you ask your immigration attorney or BIA-accredited representative to complete and sign a [Form G-28](#) (Notice of Entry of Appearance as Attorney or Accredited Representative) and submit it with your application. We may change this recommendation in the future, however, as we learn more about the Trump administration's plans for DACA.

**Some negative factors to consider.** Also, consider this: If you apply for DACA today, it takes three months or more to process a DACA application. Three months from now the DACA program may have been terminated, and we don't know what USCIS will do about pending applications. It's possible not only that your application will not be approved, but that you may lose the \$495 application fee,<sup>6</sup> and, in the worst-case scenario, USCIS may share your information with U.S. Immigration and Customs Enforcement (ICE).

Another crucial factor to consider is whether upon submitting your application you would be identified as an enforcement priority and therefore be subject to being deported. The Trump administration has [drastically broadened](#) the criteria for who is considered an

<sup>4</sup> [www.americanprogress.org/issues/immigration/news/2016/10/18/146290/new-study-of-daca-beneficiaries-shows-positive-economic-and-educational-outcomes/](http://www.americanprogress.org/issues/immigration/news/2016/10/18/146290/new-study-of-daca-beneficiaries-shows-positive-economic-and-educational-outcomes/).

<sup>5</sup> See *Number of I-821D, Consideration of Deferred Action for Childhood Arrivals by Fiscal Year, Quarter, Intake, Biometrics and Case Status FY 2012-2017 (March 31, 2017)* (USCIS), [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca\\_performance\\_data\\_fy2017\\_qtr2.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_performance_data_fy2017_qtr2.pdf).

<sup>6</sup> The application fee increased from \$465 to \$495 as of December 23, 2016.

immigration-enforcement (deportation) priority,<sup>7</sup> so you should ask your lawyer or accredited representative to assess your situation based on the broadened criteria and to explain to you how the government's new policies may affect your eligibility to renew your DACA.

**Positive scenarios to consider.** On the other hand, there are scenarios under which submitting your application now may have positive results. For example, if the DACA program is not terminated before your application is approved, the following possibilities would still exist:

- The Trump administration may decide not to terminate the DACA program. You would then have work authorization and be protected from deportation.
- The DACA program may be terminated, but people who already have DACA may still have work authorization and be protected from deportation until their DACA and work permit expire.
- The Trump administration may decide to stop accepting first-time applications for DACA but continue to allow people who already have DACA to renew it.
- Legislation such as the [BRIDGE Act](#) could be enacted that would make people who have DACA automatically eligible for work authorization and protection from deportation.<sup>8</sup>

### ■ I've decided to go ahead and apply for DACA. What else should I know before I submit my application?

If you decide to submit an application after you've consulted with an attorney or accredited representative, we recommend that you include in your application a completed [Form G-28](#), Notice of Entry of Appearance as Attorney or Accredited Representative.<sup>9</sup> The G-28 must be completed by your attorney or accredited representative. It provides information about their eligibility to act on your behalf.

Also, make sure to use the latest edition of [Form I-765](#) (Application for Employment Authorization),<sup>10</sup> which is dated 01/17/17 (the date is in the form's bottom-left corner). The processing of your DACA application may be delayed if you don't submit it on the form dated 01/17/17, because USCIS may send you a notice telling you that you must resubmit the application on the 01/17/17 version.

You can take certain additional steps that may get your application processed faster than it would be otherwise. For example, if you receive the notice of your biometrics appointment and don't want to wait until the appointment time, you could go to the Application Support Center that's listed on the notice and try to get a walk-in appointment. You could also try taking the steps described in NILC's [Steps to Take if Your DACA Renewal Is Delayed](#).<sup>11</sup>

More information about submitting a first-time application for DACA is available at [www.nilc.org/faqdeferredactionyouth/](http://www.nilc.org/faqdeferredactionyouth/).

<sup>7</sup> See *Understanding Trump's Executive Order Affecting Deportations and "Sanctuary" Cities* (NILC, Feb. 24, 2017), [www.nilc.org/exec-order-deportations-sanctuary-cities/](http://www.nilc.org/exec-order-deportations-sanctuary-cities/).

<sup>8</sup> More information about the BRIDGE Act is available at [www.nilc.org/faq-bridge-act/](http://www.nilc.org/faq-bridge-act/).

<sup>9</sup> <https://www.uscis.gov/g-28>.

<sup>10</sup> <https://www.uscis.gov/i-765>.

<sup>11</sup> [www.nilc.org/steps-take-daca-renewal-delayed/](http://www.nilc.org/steps-take-daca-renewal-delayed/).

If you decide *not* to submit an application for DACA at this time, while you're waiting to see what the Trump administration decides about the DACA program you can gather any supporting documents that you will have to submit with your application if and when you apply. You can also fill out the application forms so they will be ready to file.

### ■ I already have DACA and am deciding whether to apply to renew it. Should I submit my renewal application?

If you *already have DACA* and are considering whether to apply to *renew* it, immigration authorities already have the information on your original application, so **there is less risk in submitting the renewal application than in submitting a first-time application**. Because we don't know what might happen to DACA under the Trump administration, we recommend that you consult with an immigration attorney or a Board of Immigration Appeals–accredited representative before submitting a renewal application.

***Some factors to consider when making your decision.*** The Trump administration has [drastically broadened](#) the criteria for who is considered an immigration-enforcement (deportation) priority,<sup>12</sup> so you should ask your immigration attorney or BIA-accredited representative to assess your situation based on the broadened criteria and explain to you how the government's new policies may affect your eligibility to renew your DACA.

It's possible that the DACA program could be terminated before USCIS can review and approve your renewal application, and we don't know what USCIS will do about pending renewal applications. It's possible not only that your application will not be approved, but that you may lose the \$495 application fee and, in the worst-case scenario, your information may be shared with ICE.<sup>13</sup>

We don't yet know how the Trump administration, if it terminates the DACA program, will treat DACA and work permits that have already been issued and have not yet expired. It may decide either to revoke all DACA recipients' DACA and work permits immediately, or it may allow people to keep their DACA and work permits until they expire, but just not renew them.

***Positive scenarios to consider.*** There are scenarios under which submitting your renewal application now may have positive results. For example, if the DACA program is not terminated before your renewal application is approved, the following possibilities would still exist:

- The Trump administration may decide not to terminate the DACA program. You would then have work authorization and be protected from deportation for an additional two years.
- The DACA program may be terminated, but people who already have DACA may still have work authorization and be protected from deportation until their DACA and work permit expire. Under this possibility, you would have work authorization and be protected from deportation for up to two years.
- The Trump administration may decide to stop accepting first-time applications for DACA but continue to allow people who already have DACA to renew it. Under this

<sup>12</sup> See [www.nilc.org/exec-order-deportations-sanctuary-cities/](http://www.nilc.org/exec-order-deportations-sanctuary-cities/).

<sup>13</sup> The application fee increased from \$465 to \$495 as of December 23, 2016.

possibility, it *may* be that only people who have a valid, unexpired work permit under DACA will be eligible to apply to renew it.

- Legislation such as the [BRIDGE Act](#) could be enacted that would make people who have DACA automatically eligible for work authorization and protection from deportation.<sup>14</sup>

### ■ I've decided to go ahead and apply to renew my DACA. What else should I know before I submit my renewal application?

If you decide to submit a renewal application after you've consulted with an attorney or accredited representative, we recommend that you include in your application a completed [Form G-28](#), Notice of Entry of Appearance as Attorney or Accredited Representative.<sup>15</sup> The G-28 must be completed by your attorney or accredited representative. It provides information about their eligibility to act on your behalf.

You may apply to renew your DACA at any time before its expiration date. You no longer must wait until at least 150 days before your DACA expires to apply. Keep in mind, however, that the adjudicator reviewing your application may decide to hold off on processing your application until a time closer to the date your current DACA expires.

Make sure to send the appropriate fee of \$495, not \$465 like the last time you applied. And make sure to use the latest edition of [Form I-765](#) (Application for Employment Authorization),<sup>16</sup> which is dated 01/17/17 (the date is in the form's bottom-left corner). The processing of your DACA application may be delayed if you don't submit it on the form dated 01/17/17, because USCIS may send you a notice telling you that you must resubmit the application on the 01/17/17 version.

You can take certain additional steps that may get your application processed faster than it would be otherwise. For example, if you receive the notice of your biometrics appointment and don't want to wait until the appointment time, you could go to the Application Support Center that's listed on the notice and try to get a walk-in appointment. You could also try taking the steps described in NILC's [Steps to Take if Your DACA Renewal Is Delayed](#).<sup>17</sup>

More information about submitting a DACA renewal application is available at [www.nilc.org/dacarenewalprocess/](http://www.nilc.org/dacarenewalprocess/).

### ■ I have a valid three-year work permit and DACA. Will I get another three-year work permit and DACA after I submit my renewal application?

A couple of hundred DACA recipients received and continue to have valid three-year work permits issued between November 2014 and February 2015 under the 2014 memorandum announcing DAPA and expanded DACA.<sup>18</sup> The process for renewal is the same for you as for other DACA recipients, and if your application is approved you will receive DACA and a work permit good for a two-year period rather than for three years.

<sup>14</sup> More information about the BRIDGE Act is available at [www.nilc.org/faq-bridge-act/](http://www.nilc.org/faq-bridge-act/).

<sup>15</sup> <https://www.uscis.gov/g-28>.

<sup>16</sup> <https://www.uscis.gov/i-765>.

<sup>17</sup> [www.nilc.org/steps-take-daca-renewal-delayed/](http://www.nilc.org/steps-take-daca-renewal-delayed/).

<sup>18</sup> DAPA is the acronym for *Deferred Action for Parents of Americans*. More information about DAPA and expanded DACA is available at [www.nilc.org/immigration-reform-and-executive-actions/](http://www.nilc.org/immigration-reform-and-executive-actions/).



The U.S. Department of Homeland Security (DHS) has clarified that its rescission of the memo that established the DAPA/expanded DACA program does not mean that people who have three-year work permits under DACA have to return them.<sup>19</sup> Furthermore, DHS says that three-year work permits will not be terminated before their expiration date and that DACA recipients who have them will be eligible to renew them closer to when they expire. Some theorize that this could mean DACA will remain available until at least February 2018 (the latest date three-year work permits and DACA issuances expire), but this presidential administration has proven not to be very predictable in many respects.

### ■ I have DACA and was planning to take a trip outside the States. Should I still go?

If you have DACA and want to continue living in the U.S., you should never travel abroad unless you have applied for and received *advance parole* from USCIS. Advance parole is permission from USCIS to return to the U.S. after traveling abroad. Keep in mind that the administration may choose not to terminate DACA but to terminate advance parole as an option available to DACA recipients.

However, because we are not sure about what the Trump administration will do with respect to DACA and advance parole, our general recommendation is that people with DACA *not* travel abroad at this time. If you decide that you must travel outside the U.S., and if you receive advance parole, we recommend that you keep your trip as short as possible. We also recommend that you arrange to have your BIA-accredited representative or attorney standing by, available by phone, when you return to the U.S. so they can provide real-time advice if the immigration officer tries to prevent you from entering. Even if you've received advance parole, people with DACA may find it harder under the present administration to be admitted into the U.S. after they've traveled abroad, nor is it certain that you will be allowed back into the U.S. if you leave.

### ■ What will happen to the information on DACA applications?

Currently, USCIS's policy is that it does not share information about a DACA applicant or the applicant's family members with U.S. Immigration and Customs Enforcement (ICE) for immigration enforcement purposes unless there are serious criminal, fraud, or national security issues with the case.<sup>20</sup> This policy is based on a 2011 USCIS memo which states that USCIS will refer to ICE only cases that raise fraud or "egregious public safety" concerns (such as that the applicant has a serious criminal conviction).<sup>21</sup> Changing these policies would require that USCIS change its memo and guidance.

<sup>19</sup> *Frequently Asked Questions: Rescission of Memorandum Providing for Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA")* (U.S. Dept. of Homeland Security, June 15, 2017), <https://www.dhs.gov/news/2017/06/15/frequently-asked-questions-rescission-memorandum-providing-deferred-action-parents>.

<sup>20</sup> See USCIS's DACA FAQ, answers 19 and 20, [www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions](http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions).

<sup>21</sup> See USCIS's memorandum *Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens*, Nov. 7, 2011, [www.uscis.gov/NTA](http://www.uscis.gov/NTA).

## ■ If I have DACA, will I be deported if the DACA program is terminated?

It's important to remember that if the DACA program is terminated, this doesn't mean that DACA recipients will automatically be deported. People with DACA would not necessarily be at greater risk of being deported than other undocumented immigrants if the DACA program is terminated. People with DACA generally are considered "low priorities" for deportation, based on how long they've lived in the U.S., their ties to the U.S., and their not having committed serious crimes, which is why they were granted DACA in the first place. Under the Obama administration, DHS considered people who, for example, have felony criminal convictions or recent deportation orders as being "enforcement priorities."<sup>22</sup> DHS assigned higher priority to detaining and deporting people who it considered enforcement priorities.

Under the Trump administration, DHS has expanded its enforcement priorities to the extent that, in effect, any actual prioritization has been eliminated. For more information on DHS's latest enforcement priorities, see [Understanding Trump's Executive Order Affecting Deportations and "Sanctuary" Cities](#).<sup>23</sup>

We are monitoring the effects these new enforcement priorities have on DACA. DACA recipients were not prioritized under the memorandum announcing the new priorities. Still, if an immigration enforcement agent encounters a DACA recipient (e.g., if a local law enforcement agency notifies ICE that they have an immigrant in custody, or the Border Patrol detains a DACA recipient, or if a DACA recipient simply is present when ICE is looking to arrest someone else), the immigration officer could use their discretion to detain the DACA recipient and, in effect, revoke their DACA by deciding that the DACA recipient is subject to being deported under the new, expanded priorities.



Remember that **DACA was an organizing victory won by undocumented immigrant youth**. It took a lot of sacrifice and resilience from a lot of young people for executive action to be announced and implemented, and it will take more from all of us to continue defending it. **Together we can and will fight to keep DACA, and to prevent DACA recipients from being deported.**

Visit [www.nilc.org/daca/](http://www.nilc.org/daca/) and our blog, [The Torch](#),<sup>24</sup> for more information and updates about DACA. We also regularly post updates on [Facebook](#) and [Twitter](#).<sup>25</sup>

**The information provided in this FAQ is *not* legal advice.** Every person's situation is different. To get legal advice about whether you should either apply for DACA for the first time or apply to renew your DACA, you should talk to a **qualified immigration lawyer** or a Board of Immigration Appeals (BIA)—**accredited representative**.

<sup>22</sup> See DHS's memorandum *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, Nov. 20, 2014, [www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf).

<sup>23</sup> [www.nilc.org/exec-order-deportations-sanctuary-cities/](http://www.nilc.org/exec-order-deportations-sanctuary-cities/).

<sup>24</sup> [www.nilc.org/news/the-torch/](http://www.nilc.org/news/the-torch/).

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