

On January 20, 2021, President Biden issued an executive order regarding the DACA program. While the DACA program continues to be litigated in the federal courts, this executive order signals the new administration's commitment to the program. Please check our [website](#) or NIJC's social media channels for future updates about DACA.

This advisory is not intended as legal advice but rather to provide information on the status of the DACA program. Individuals should seek a legal consultation from a qualified immigration attorney or DOJ accredited representative for a full assessment of their individual case.

### **1. What does the executive order say?**

On January 20, 2021, President Biden issued the following executive order: "Preserving and Fortifying Deferred Actions for Childhood Arrivals (DACA)." This executive order signals the new administration's commitment and support of the DACA program, which stands in stark contrast to the outgoing administration.

The executive order outlines and reiterates the policy basis for the DACA program established in 2012 under the Obama-Biden Administration. The executive order further instructs the Secretary of Homeland Security and the Attorney General to take the necessary steps to maintain and strengthen the DACA program.

### **2. I have a pending application to renew my DACA benefits with USCIS. How does this executive order affect my pending application?**

USCIS will continue to adjudicate all properly filed DACA renewal requests. The executive order confirms this new administration's commitment to the DACA program.

If your request has been pending for more than 105 days, you or your legal representative can submit a status inquiry via phone by calling 1-800-375-5283 or online via U.S. Citizenship and Immigration Service's ("USCIS") inquiry submission platform: <https://egov.uscis.gov/e-request>.

If that does not yield a result, you or your legal representative may wish to consider seeking congressional assistance. In Illinois, Senators [Duckworth](#) and [Durbin](#) each have the request process located on their congressional website.

### **3. My DACA has expired or is close to expiring; can I still apply to renew my DACA?**

If you currently have DACA or your DACA has been expired for less than one year, you can submit a DACA renewal application. If you are interested in attending one of our upcoming, free DACA renewal clinics, you can register [here](#). We are updating the calendar frequently with new clinic offerings.

If your DACA expired more than one year ago or it was previously terminated, you can submit an initial DACA application. If you are in this position, please schedule a DACA consultation by calling 312-660-1370 on Tuesdays or Thursdays or emailing [nijcild@heartlandalliance.org](mailto:nijcild@heartlandalliance.org).

#### 4. I have never had DACA; can I apply for DACA now?

Yes. On December 4, 2020, District Court Judge Garaufis, in *Batalla-Vidal v. Wolf*, issued an order that fully restored the DACA program. This means that the government must accept initial DACA applications. If you meet the criteria for a first-time applicant, you can submit your application for DACA benefits.

The executive order issued by President Biden further supports the DACA program. If you are in this position, please schedule a DACA consultation by calling 312-660-1370 on Tuesdays or Thursdays or emailing [nijcild@heartlandalliance.org](mailto:nijcild@heartlandalliance.org).

#### 5. What requirements must I meet to be eligible for an initial DACA application?

To qualify for an initial DACA, you must prove that you:

- Came to the United States before you turned 16 years old
- Were born on or after June 16, 1981
- Have continuously lived in the United States from June 15, 2007 to present
- Are at least 15 years old (those in removal proceedings may apply before turning 15) at the time of filing your application
- Are currently enrolled in elementary school, middle school, high school or in a GED, ESL, literacy, or job training program; graduated from high school or obtained a GED; or were honorably discharged from the U.S. Military
- Have not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety
- Did not have lawful immigration status on June 15, 2012, and do not currently have lawful status
- Were in the United States on June 15, 2012, and remain present

#### 6. How much will it cost to apply for DACA benefits?

The cost to file your DACA application, whether it is a first time or a renewal application, is \$495.00.

#### 7. My DACA is expired; will USCIS refer my case to ICE for enforcement purposes?

On January 20, 2021, President Biden also issued the following executive order: “Executive Order on the Revision of Civil Immigration Enforcement Policies and Priorities.” Through this order, the Biden administration officially revoked the far-reaching enforcement priorities set out by the prior

#### What impact does this executive order have on the ongoing DACA litigation?

The Supreme Court previously ruled that the Trump administration’s attempts to end the DACA program were illegal. Despite the Supreme Court’s ruling, there are still several lawsuits across the United States dealing with DACA. This past December, District Court Judge Garaufis ordered the Trump administration to fully restore the DACA program, thus allowing initial applications once again.

The majority of the pending lawsuits were filed by individuals trying to stop the government from ending the DACA program. Through this executive order, Biden outlined his administration’s support of the program, which is in stark contrast to the previous administration. Now that the Biden administration is in office, we will have to wait to see what steps the Department of Justice takes to settle some of those lawsuits since the administration wants to maintain and strengthen the program.

While the majority of the pending lawsuits were filed by supporters of the DACA program in order to preserve it, there is also a lawsuit pending in Texas filed the State of Texas and nine other states. These states argue that the DACA program is unconstitutional. This past December, District Court Judge Hanen held a hearing in this case. We are currently awaiting a decision from the judge. Any potential decision from of this court is subject to temporary pauses or reversal by a higher court. Please check our [website](#) or NIJC’s social media channels for future updates about DACA.

administration. The Biden administration declared that it is resetting “the policies and practices for enforcing civil immigration laws to align enforcement” with the new administration’s core values. At the same time, the Biden administration is committed to adhering to due process of law and safeguarding the dignity and well-being of all families and communities.

Additionally, the previously issued 2011 Napolitano memo specifically guides enforcement for DACA applicants. This guidance is also set forth in USCIS’s Form I-821D instructions. In sum, the government has stated that information provided to USCIS in DACA requests will not be proactively provided to ICE and/or CBP for the purpose of immigration enforcement, unless the requestor meets the criteria for the issuance of a Notice to Appear set forth in USCIS’s 2011 guidance. USCIS will review its guidance to decide whether the agency deems the referral warranted.

If your DACA is expired, we recommend that, if eligible, you apply to renew as soon as possible. If you are interested in attending one of our upcoming, free DACA renewal clinics, you can register [here](#). We are updating the calendar frequently with new clinic offerings.

#### **8. My work permit was lost, stolen or destroyed. Can I request a replacement?**

If you are currently in a valid period of DACA, you may apply to replace a lost, stolen, or destroyed EAD/work permit by filing a new Form I-765 and paying the \$495.00 filing fee. If your DACA benefits have expired and you are within the timeframe to renew, you may seek to renew your DACA protection and, within that process, seek a new work permit.

#### **9. Can a current DACA recipient apply for special permission to travel (“advance parole”)?**

Yes. A December court order fully restored the DACA program, which means that the government must accept advance parole applications.

You may qualify for advance parole if you currently have DACA and you can prove that your travel abroad is based on employment, educational, or humanitarian purposes.

Traveling on advance parole may come with some risks. CBP retains the authority to refuse entry to an individual – even one that has an approved advance parole document. Individuals who are interested in advance parole **should** speak to a qualified legal representative to assess their individual case and fully understand the potential risks associated with travel.

If you would like to explore advance parole, we recommend that you schedule a consultation with a licensed attorney or DOJ recognized organization to see if advance parole is a safe option for you to pursue. To schedule a legal consultation with NIJC, individuals can call 312.660.1370 on Tuesdays or Thursdays or email [nijcild@heartlandalliance.org](mailto:nijcild@heartlandalliance.org).

#### **10. I have or had DACA but I also have another application for an immigration benefit pending with USCIS. How do these memos affect my pending application for other immigration benefits?**

USCIS will continue to process your pending application for other immigration benefits. If you have a legal representative, speak to them about whether you are eligible for a work permit based on your pending application or whether you should renew your DACA benefits and seek a work permit via those means.

There may be other reasons to maintain DACA benefits, even as you seek other immigration status. For example, it is possible future laws will recognize people with DACA as eligible for permanent status, or the other immigration status you seek may not be certain, in which case retaining DACA may be advantageous. If you do not have a legal representative, we recommend that you schedule a consultation

with a licensed attorney or DOJ recognized organization. To schedule a legal consultation with NIJC, individuals can call 312.660.1370 on Tuesdays or Thursdays or email [nijcild@heartlandalliance.org](mailto:nijcild@heartlandalliance.org).

**11. Even though DACA is still in effect, I am afraid I might one day be forced to return to my home country, where I fear harm. What can I do?**

U.S. immigration laws offer certain protection-based immigration benefits. For example, if you are afraid to return to your home country because you believe you will be harmed (“persecuted”) based on your race, religion, nationality, membership in a particular social group or political opinion, then you may be eligible for asylum or another protection-based immigration benefit. This is a complex area of the law and requires an in-depth analysis of your specific fear of return. If you are afraid to return to your home country, we recommend that you schedule a consultation with a licensed attorney or DOJ recognized organization.

**12. Does the Social Security Number (SSN) I received belong to me forever?**

The SSN that you received after to your initial DACA grant will belong to you for life. In fact, you can continue using your SSN for various matters (banking, housing, education, etc.). In terms of lawful employment, you may need to present a valid EAD/work permit in order to utilize your SSN for employment purposes.

**13. My work permit expires soon; do I have to tell my employer?**

If your DACA is close to expiring, we recommend that, if eligible, you apply to renew as soon as possible. If you are interested in attending one of our upcoming, free DACA renewal clinics, you can register [here](#). We are updating the calendar frequently with new clinic offerings.

You are not legally obligated to notify your employer that your work permit is expiring. The employer is obligated to make sure it is employing individuals that are authorized to work. If the employer asks you for a new work permit, you have until your current work permit expires to produce a new one. If you do not produce a new work permit when your current work permit expires, your employer can terminate you. However, the employer has to give you the opportunity to present a new work permit and cannot take negative action against you (i.e. terminate your employment) until your current work permit expires.

**14. What can I do now?**

We highly encourage you to consult with a legal service provider about the possibility of filing an application for initial or renewal DACA benefits. We also encourage you and your family members to seek a legal consultation to explore other potential forms of immigration relief. NIJC has found that 14.3% of individuals screened for DACA eligibility were potentially eligible for more permanent forms of immigration relief. To schedule a legal consultation with NIJC, individuals can call 312.660.1370 or email [nijcild@heartlandalliance.org](mailto:nijcild@heartlandalliance.org).