

Northwest Immigrant Rights Project - Community Advisory – 12/07/2020 Advisory Regarding Status of DACA Program

Basics: On December 4, 2020, a federal judge in New York ordered the Trump Administration to restore the DACA (Deferred Action for Childhood Arrivals) program to the way it existed prior to September 2017, when the Administration moved to try to terminate the program.

DACA has been a program established by President Obama in 2012 that granted a form of temporary protection from deportation known as “deferred action” to undocumented immigrants who came to the U.S. before the age of 16, resided in the U.S. since June 2007 and met other requirements. On September 5, 2017, the Trump Administration [announced](#) that it would be ending the program effective as of March 5, 2018. However, a number of court challenges were filed that blocked the Administration from actually being able to terminate the program. Those cases were ultimately appealed to the U.S. Supreme Court, which ruled against the Trump Administration in June 2020, but did so in a way that did not conclusively resolve all of the legal questions around the DACA program. Despite the Supreme Court’s ruling, in July 2020, the Administration moved to again restrict prevent new applicants from applying and making other changes explained below.

What does the New York federal court’s decision mean? The NY federal court determined that the person who claims to be acting as Secretary of Homeland Security (Chad Wolf) did not have the authority to make the changes to the DACA program announced in July 2020 and that the program must therefore be restored to its status before September 2017. This ruling requires the Department of Homeland Security (DHS) to again begin accepting applications from new DACA applicants and make other changes detailed below. However, the Administration has already announced they will appeal this ruling and there are other legal challenges pending that could affect this decision.

I am a current DACA recipient or have had it in the past, what should I do now? If your current DACA status and work permit were issued for a two-year period and they expire in the next five months or have already expired, we recommend that you consider filing a renewal of your DACA status, while keeping in mind the following:

- We always recommend that you consult with an attorney or accredited representative before submitting an immigration application, but we think this is particularly important if you have had any contact with the police or immigration officials, or have left the United States since your last DACA application was approved.

If you renewed your DACA status in the past few months and were issued a work permit valid for only one year, the federal judge’s December 4 decision states that your work permit should be extended for an additional year but it is unclear at this point how this will be implemented.

We also recommend that DACA recipients who have not already done so recently consult with an immigration attorney or accredited representative to explore whether they might qualify for an immigration status that has a path to citizenship. It is particularly important DACA recipients do this if they:

- Are married to a U.S. citizen or lawful permanent resident;
- Have been the victim of a crime such as domestic violence, sexual assault or others in the U.S.; or
- Are under 21 years of age.

If you cannot afford to have a consultation with a private immigration attorney, please visit www.nwirp.org/daca for resources.

I never applied for DACA but think I qualify, what should I do? If you have never applied to the DACA program but you believe you meet [the criteria](#) for the program, our current advice is that you should consider submitting an initial application but only after you have consulted with an attorney or accredited representative to understand if you do qualify and can assess the risks and benefits of doing so. If you cannot afford to hire a private attorney, you may call (855) 313-7326 after December 9 to schedule a virtual screening session and, if you qualify, we may also be able to

assist you in preparing your initial application (but please keep in mind that appointment slots will be limited). You should understand that, at this time, there is still a risk that further legal actions will mean that initial applications will be rejected. If you decide to proceed with an initial application, there remains a possibility that you may end up losing your application fee and face other risks.

I have DACA and am currently working, should I tell my employer about my status? We do not recommend that DACA recipients tell their employers that they have DACA status. You are not required to tell your employer that you have DACA even if your work permit expires. It is the employer that is required to re-verify your work authorization status and the employer should not take adverse action against you as long as your work permit remains valid. But keep in mind that the fact that you have a valid social security number will not mean that you will have permission to work if your work authorization has expired.

I am in removal (deportation) proceedings, what should I do? If you are represented by an attorney, you should contact that attorney. If you are not, you should consult with an attorney or accredited representative as soon as possible. If you cannot afford an attorney, you can contact NWIRP's offices at the numbers listed below. If you're in removal proceedings and it is determined that you meet the eligibility criteria, you should strongly consider applying for DACA.

I am a current DACA recipient and am considering traveling outside the U.S. under advanced parole, what should I do? While the decision of the federal judge in New York should allow DACA applicants to seek an advance parole document to travel internationally under the original DACA rules, we urge those considering traveling outside the U.S. under advance parole to talk to an attorney or accredited representative before doing so. During the current public health crisis, we generally do not recommend any international travel as travel restrictions are constantly changing and there is a risk that you may not be allowed back in even with an advance parole document. And always keep in mind that, if you leave the U.S. without advance parole, you may not be able to return to the U.S. and you will most likely not be eligible to renew your DACA status.

Do the recent court decisions mean that we no longer need the Dream Act? We absolutely still need Congress to enact a clean version of the DREAM Act. The DACA program is temporary and we need Congress to pass legislation that will allow DACA recipients and others to have a pathway to citizenship.



NWIRP offices: Seattle – (206) 587-4009
Tacoma (for those detained at the NWDC Only) – (253) 383-0519
Tacoma (for non-detained) – (206) 816-3893
Yakima Valley (Granger) – (888) 756-3641
Wenatchee – (866) 271-2084
www.nwirp.org

For a searchable database of private attorneys, please visit www.aialawyer.org

To schedule a virtual appointment for DACA consultations, please call 1 (855) 313-7326
(Available after December 9 only)