

Response from USCIS

Following the Court Decision to Restore DACA

Last Updated January 14, 2018

What is DACA? DACA or Deferred Action for Childhood Arrivals was announced by former President Barack Obama on June 15, 2012, and implemented by then Secretary of Homeland Security Janet Napolitano. The policy enabled people who came to the United States before the age of 16 to apply for “deferred action” (a form of prosecutorial discretion) and a work permit. The program has protected nearly 800,000 people in the United States. On September 5, 2017, Attorney General Jeffrey Sessions announced a decision to end DACA. Secretary of Homeland Security Kirstjen M. Nielsen published a letter, the press release, and the Q&A stating that it will phase out DACA accordingly. Following the September 5 announcement, several lawsuits were filed to challenge the rescission of DACA.

Litigation Summary: On January 9, 2018, the [federal district court for the Northern District of California](#) issued a nationwide preliminary injunction and ordered DHS to continue the DACA program. The ruling is nationwide and means that DACA should continue as it was before the decision to end DACA, including allowing DACA enrollees to renew their applications with certain exceptions. First, new applications from applicants who have never before received deferred action need not be processed. Second, the advance parole feature need not be continued for the time being for anyone. Third, defendants may take administrative steps to make sure fair discretion is exercised on an individualized basis for each renewal application. The court also stated that DACA recipients can still be subject to removal proceedings.

Response from USCIS: In response to the litigation and on January 13, 2018, United States Citizenship and Immigration Services (USCIS) issued “[Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction.](#)” According to the announcement, USCIS has resumed accepting requests to renew a deferred action under DACA. USCIS will also maintain the terms of DACA as it was in place before it was rescinded on September 5, 2017.

Who can apply for DACA renewal? If you have received DACA before AND your DACA expired on or after **September 5, 2016**, you can file a renewal application to USCIS by filing the [Form I-821D \(PDF\)](#), [Form I-765 \(PDF\)](#), and [Form I-765 Worksheet \(PDF\)](#), with the appropriate fee or approved fee exemption request, at the [USCIS designated filing location](#). USCIS instructs applicants to list the date on which their DACA ended in the appropriate box on Part 1 of the Form I-821D.

If your DACA **expired before September 5, 2016, or was terminated** at any time, you cannot file a renewal application, but you can file a **new initial application** for DACA in accordance with the Form I-821D and Form I-1765 Instructions. USCIS instructs applicants to list the date on which their DACA was expired or terminated on Part 1 of the Form I-821D, if available.

The goal of this document is to provide general information regarding DACA and is not meant to act as a substitute to legal advice from an attorney.

Can I apply for advanced parole? USCIS will not accept or approve advanced parole requests from DACA recipients.

I have never had DACA. Can I apply for DACA now? No. If you have not previously received DACA, you cannot file a new application for DACA.

I think I am eligible to request or renew my DACA. What should I do next? USCIS has clearly indicated that it is accepting renewal applications, so it is beneficial to considering applying now. Ultimately, whether to apply for DACA depends on the circumstances of each case and the risk barometer of the applicant. Any person considering applying for DACA should consult with an immigration attorney beforehand.

How long will USCIS accept applications? This is unknown. The administration is likely to appeal the decision. Possibly, a higher court will reverse or stay the decision of the district court in California.

What Comes Next? USCIS has indicated that additional information is forthcoming. We hope that further guidance will answer some of the outstanding questions. Separately, there are several pending legal challenges to the DACA rescission that may be decided in the coming weeks. If additional courts rule in favor of the plaintiffs and are later appealed, this could lead to a request that the Supreme Court hear the case.

Where can I find more resources?

- [Penn State Law's Center for Immigrants' Rights Clinic](#)
- USCIS: Deferred Action for Childhood Arrivals: [Response to January 2018 Preliminary Injunction](#)
- [National Immigration Law Center](#) and United We Dream, USCIS and DACA Renewal Applications: *What You Need to Know*
- [Twitter Thread](#) on Injunction by Shoba Sivaprasad Wadhia

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