Basics: On June 18, 2020, the U.S. Supreme Court issued a ruling in Department of Homeland Security v. Regents of the University of California that the Trump Administration’s decision to rescind Deferred Action for Childhood Arrivals (DACA) was “arbitrary and capricious” as it did not follow the proper procedures, but recognized that the Administration could still move to terminate DACA. At this moment, we are awaiting the Administration’s next steps.

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 leading to today’s decision. We are providing the advice below to current and potential DACA recipients to address questions following the Court’s ruling. We will continue to update this guidance.

What does the Court’s decision mean? The Court determined that the current Administration did not follow the proper procedures under federal administrative law because the Department of Homeland Security’s (DHS) decision to rescind DACA did not consider the reliance interests of DACA recipients in the program. However, the Court recognized that the Administration and DHS could still move to terminate the DACA program if they followed proper procedures. For now, DACA applications for individuals who have been approved for DACA status in the past, even if their work permits have expired, continue to be allowed. It is unclear whether initial DACA applications or Advance Parole documents would be allowed.

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 expire in 2020 (or early 2021) or have already expired, we recommend that you consider filing a renewal of your DACA status, while keeping in mind the following considerations:

- 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;
- The Trump Administration has yet to announce how it would proceed after today’s decision—it could decide to continue the DACA program or it could decide to try again to terminate it. When submitting your application, please be aware that there is a risk that the Administration could decide to terminate the DACA program while your renewal application is pending and that you may lose your application fee.

We recommend that you consult with an immigration attorney or accredited representative to explore whether you might qualify for an immigration status that has a path to citizenship. It is particularly important you do this if you:

- 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 US; 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, our current advice is that you wait to decide whether to apply to the program at this point, as it is not yet clear whether new applications will be accepted and the Court decision recognizes that the Administration and DHS has authority to act either to continue the program or terminate it. Our recommendation is that you consult with an attorney or accredited representative to understand if you have any other options under immigration law. If you cannot afford to hire a private attorney, please visit www.nwirp.org/daca for resources.

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. Also, 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. If your work authorization document will expire in 2020 (or early 2021) we recommend you seek renewal if you remain eligible.

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.

I am a current DACA recipient and was planning to travel outside the U.S. under advanced parole, what should I do? The Court did not make clear whether DACA applicants could resume to seek an advance parole document and the Administration has yet to announce its position. We urge those considering traveling outside the U.S. under advance parole to talk to an attorney or accredited representative before doing so. 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. During the current public health crisis, we do not recommend any 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.

I am a current DACA recipient, is there a risk that I will be deported if my DACA status ends? The Court’s decision allowed for DACA to continue. However, the Administration has yet to announce how it will respond to the ruling. The Administration could still seek to end the program, which could lead to DACA recipients losing their status and again being subject to immigration enforcement as they were before being granted DACA. The highest risk will be for any DACA recipients who had a deportation order on their record before obtaining DACA or who have been arrested (or are arrested in the future) by the police, even for minor offenses. If a DACA recipient is detained or questioned by immigration authorities, we recommend that they do not answer any questions and seek legal assistance as soon as possible.

Does the Court’s decision mean that we no longer need the Dream Act? We absolutely still need Congress to enact a clean version of the DREAM Act.

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.ailalawyer.org

To schedule a virtual appointment for DACA clinics, please call 1 (855) 313-7326