

Northwest Immigrant Rights Project - Community Advisory – 07/28/2020

Advisory Regarding Status of DACA Program Following DHS Announcement

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. On July 28, 2020, the Administration responded to this decision by announcing that it would continue to allow renewal applications under the program but for a shorter time period and would not accept any new initial applications. More details are below.

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 the June 18 decision and Department of Homeland Security's (DHS) July 28 announcement. We are providing the advice below to current and potential DACA recipients to address questions following the Court's ruling and the DHS's response.

What do these developments mean? The Supreme Court determined that the Trump Administration did not follow the proper procedures under federal administrative law because the 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. The July 28 DHS announcement indicated that the Administration needed time to make a long-term decision about the future of the DACA program. In the meantime, DHS announced that DACA renewal applications for individuals who have been approved for DACA status in the past, even if their work permits have expired, will continue to be allowed but their DACA status will only be extended for one year (not two years as was the case previously). DHS also announced that it would not accept initial applications from individuals who have never had DACA in the past.

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;
- If your renewal application is approved, your DACA status and work permit will only be valid for one year from the date they are issued, not two years, as was the case previously. It is possible these changes could be put on hold through further legal cases but for now, you should anticipate only a one-year extension.
- The July 28 announcement from DHS does not affect the duration of DACA renewals or work permits that were issued prior to that date. In other words, if your current work permit is valid for a two-year period, it will not be affected by the July 28 announcement.

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. This is particularly important 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. If you need assistance with a DACA renewal application, call (855) 313-7326, (855) 31-DREAM.

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 do not move forward with an initial DACA application as the Administration has said they will reject them. It is possible this could change due to legal challenges but we do not recommend submitting an initial application for someone who has not had DACA until any legal challenges have resolved this question. If you think you might qualify for an initial DACA application, you could continue collecting documentation that you have lived in the U.S. since June 2007 in case an opportunity to apply becomes available in the future. In addition, we also recommend that you consult with an attorney or accredited representative, if you have not done so recently, to understand if you have any other options under immigration law.

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 permit has expired. If your work authorization document will expire in 2020 (or early 2021) we recommend you seek renewal if you remain eligible. As noted earlier, if your current work permit is valid for a two-year period, that duration is not impacted by the July 28 DHS announcement.

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 advance parole, what should I do? The July 28 DHS announcement stated that the agency would only consider requests for permission to travel abroad (known as "advance parole") for current DACA recipients in "exceptional circumstances," but did not define what this means. 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 that DACA recipients travel internationally 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 and the DHS July 28 announcement allows DACA recipients to renew their status, though for a shorter period of time. The Administration could still seek to end the program in the future, 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 or the DHS announcement 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 renewal clinics, please call 1 (855) 313-7326