



AUGUST 24, 2020

# DACA FREQUENTLY ASKED QUESTIONS

## DHS JULY 2020 MEMORANDUM

While the U.S. Supreme Court's decision on June 18, 2020 should have restored the Deferred Action for Childhood Arrivals (DACA) program in its entirety, a recent announcement by the Trump administration has once again thrown the program and DACA recipients into limbo.

On July 28, 2020, over a month after the U.S. Supreme Court decision, the Department of Homeland Security (DHS) issued a new memorandum ("July 2020 memorandum") limiting the DACA program. This announcement was followed by USCIS guidance on August 21, 2020 which explains in more detail how the July 2020 memorandum will be implemented. To help orient the community, below are responses to some frequently asked questions that have emerged since the announcement.

Note that this resource is not meant to serve as legal advice, and all individuals who want to understand how this new memorandum impacts them personally should speak with a trusted legal service provider.

### 1. WHAT IS DACA?

DACA is a policy fought for by immigrant youth and created by the Obama Administration in 2012 to protect certain undocumented individuals who came to the United States as children from deportation. In addition to protection from deportation, DACA recipients are eligible for work authorization, a social security number, and a state-issued identification or driver's licenses. DACA does not grant lawful status such as a visa or green card, nor does it offer a pathway to U.S. citizenship. Prior to the July 2020 memorandum, DACA was granted for a two-year period which recipients could renew, and there are approximately 645,600 current DACA recipients.

### 2. WHAT IS THE STATUS OF THE DACA PROGRAM TODAY?

DACA remains available to individuals who have previously been granted DACA. This means it is a program for people who currently have DACA, had DACA at some point in the past, or had their DACA terminated. These individuals can submit a DACA renewal request. Under the July 2020 memorandum, DACA will only be renewed for a one-year period. This means DACA recipients will have to apply to renew their DACA annually.

### 3. WHAT DID THE U.S. SUPREME COURT DECIDE?

The U.S. Supreme Court rejected the Trump Administration's 2017 attempt to terminate DACA, finding the way it was terminated as unlawful and ordered that the decision be sent back to the Department of Homeland Security (DHS). The decision should have resulted in the restoration of the original 2012 program and would have required USCIS to accept both initial and renewal applications for DACA and advance parole applications from DACA recipients.

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#### **4. WHAT DID THE JULY 2020 MEMORANDUM CHANGE?**

The July 2020 memorandum substantially limits the program. First, it eliminates DACA eligibility for applicants who have not received DACA in the past, stating that all initial requests that were previously submitted or are submitted will be rejected and the fee returned. Second, it eliminates the possibility for DACA recipients to be granted advance parole, a special permit for international travel, except in exceptional circumstances. Lastly, while it leaves intact the ability for DACA recipients to submit requests for renewal, it changes the duration of protection under DACA from a two-year period to a one-year period.

#### **5. CAN I APPLY FOR DACA FOR THE FIRST TIME?**

Even though the U.S. Supreme Court decision should have restored the DACA program, USCIS refused to process any initial applications. In fact, most initial applications received after the Supreme Court decision were held until DHS decided the next step for the program. Now, in light of the July 2020 memorandum, USCIS will not process any initial applications and will reject all such filings without any prejudice meaning that the person can apply for initial DACA if the process becomes available again someday. Individuals in need of guidance about their individual circumstances should speak to an immigration attorney or a DOJ accredited representative.

#### **6. IF I CURRENTLY HAVE DACA, CAN I STILL RENEW? WHEN SHOULD I FILE FOR RENEWAL?**

Yes, all individuals who have DACA now or had DACA in the past can still renew. USCIS recommends that individuals submit DACA renewal requests between 150 to 120 days (5 to 4 months) before their current DACA expires. Though USCIS had accepted DACA filings submitted earlier than the 150 days from expiration, the new USCIS guidance issued on August 21, 2020 states that early DACA filings will no longer be accepted. Applicants who submit earlier than the 150 days will have their requests rejected and must refile within the time window mentioned above.

Individuals should submit their DACA renewals 150 days (or 5 months) before their current DACA expires.

#### **7. DOES THIS JULY 2020 MEMORANDUM AFFECT ME IF I HAVE TO REPLACE MY WORK AUTHORIZATION BECAUSE IT WAS LOST, STOLEN, OR DAMAGED?**

No. According to the USCIS Guidance issued on August 21, 2020, recipients whose two-year work authorization was lost, stolen, or damaged, and need to file for a replacement, will be issued a replacement two-year work authorization for the same time period as their previous work authorization. This will be the case so long as the work authorization replacement application is otherwise approvable.

#### **8. CAN I APPLY FOR ADVANCE PAROLE?**

The July 2020 memorandum instructs USCIS to reject advance parole requests from current DACA recipients except in "exceptional circumstances." Some examples of circumstances that may warrant permission to travel abroad include things like:

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- travel to support national security interest of the United States including U.S. military interests;
- travel to support U.S. federal law enforcement interests;
- travel to obtain life-sustaining medical treatment that is not otherwise available in the United States; or
- travel needed to support the immediate safety, wellbeing, or care of an immediate relative, particularly minor children.

It is still not clear what exactly will qualify under this, but applicants should remain informed and speak to an immigration attorney or a DOJ accredited representative to learn about what circumstances lead to an approved Advance Parole application. If your advance parole application is denied, the associated fee will not be returned.

If you are interested in applying for advance parole to travel abroad, speak with an immigration attorney or a DOJ accredited representative before applying and before you travel outside the United States even if you have been granted advance parole

The July 2020 memorandum states that any approved advance parole request will remain valid.

## **9. WHAT IF I RECENTLY SUBMITTED A DACA RENEWAL, DOES THE JULY 2020 MEMORANDUM AFFECT MY DACA GRANT?**

According to the July 2020 memorandum, all applications that were pending when the memorandum was issued will be processed following the new terms. This means that if you are still waiting for an approval notice, your DACA renewal period will only be for one year, instead of two years.

## **10. WHAT WILL HAPPEN IF I SUBMITTED A FIRST-TIME APPLICATION FOR DACA BEFORE THIS ANNOUNCEMENT?**

The July 2020 memorandum instructs USCIS to reject all initial DACA requests and return the filing fee. This means that USCIS will return your application packet and fee by mail. USCIS will reject your request without any prejudice, meaning that the person can apply for initial DACA if the process becomes available again someday.

## **11. WHAT WILL HAPPEN IF I SUBMITTED AN APPLICATION FOR ADVANCE PAROLE BEFORE THIS ANNOUNCEMENT?**

If you applied for advance parole before August 21, 2020, your application will be rejected and the associated fee returned, and you will have the opportunity to reapply under the new guidance. The memorandum also instructs USCIS to reject advance parole applications from DACA recipients and return them along with the filing fee to the applicant, UNLESS USCIS determines the applicant demonstrates "exceptional circumstances." Please see question #7 for examples on what might be considered an exceptional circumstance. You should speak to an immigration attorney or a DOJ-accredited representative before applying or reapplying for advance parole.

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If your advance parole has already been approved, the July 2020 memorandum states that it will not terminate your grant, and you should be able to use the travel permit for travel. You should speak to an immigration attorney or a DOJ accredited representative before traveling to make sure you will not encounter any problems upon your return.

## **12. WHAT SHOULD I CONSIDER BEFORE I APPLY FOR DACA RENEWAL?**

Individuals seeking to renew their DACA should keep in mind that DACA does not provide a path to permanent residence or U.S. citizenship and is subject to change. While a future administration may choose to reinstate or expand DACA, the July 2020 memorandum states this administration is still considering terminating DACA.

The risks associated with filing a DACA renewal application will depend on an individual's personal facts. Below are some things to consider and discuss with the legal representative helping you.

- Any risk associated with disclosing your personal information to DHS is small, as DHS already has that information from previous applications.
- However, recipients who have had a recent interaction with law enforcement or immigration officials should consult an immigration attorney or a DOJ accredited representative before submitting a renewal application. This is important since some criminal issues could put an applicant at risk of denial or even deportation. More information on crimes and DACA renewals can be found here:

[https://www.ilrc.org/sites/default/files/resources/crimes\\_and\\_daca\\_renewals.pdf](https://www.ilrc.org/sites/default/files/resources/crimes_and_daca_renewals.pdf).

## **13. WILL USCIS USE MY INFORMATION, EVEN IF MY REQUEST WAS REJECTED?**

The July 2020 memorandum confirms that USCIS will continue to use the information-sharing policy that has been in place since the beginning of the DACA program. This means that the information you provide in a DACA application should be protected for purposes of immigration enforcement unless you are considered a national security threat, have committed fraud in the DACA application, or have committed a serious criminal offense. However, there have been reports that ICE can access USCIS data. You should speak to an immigration attorney or a DOJ accredited representative to receive an individualized assessment of any impact on your case.

## **14. WILL DACA BE TERMINATED?**

The July 2020 memorandum states that DHS thinks that the DACA program presents some policy concerns that may merit DACA's full rescission. It further states that those policy concerns justify modifying aspects of DACA immediately while DHS continues to consider the future of DACA. Additionally, the July 2020 memorandum states that DHS cannot use this memo as a basis to shorten prior DACA grants, and that they will continue to be valid until they expire.

It is important to remember that the changes outlined in the July 2020 memorandum are subject to change by the current or future administrations. In addition to changes by DHS, legal cases challenging DACA or DHS' actions may also affect the DACA program.

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## **15. WHO CAN HELP ME COMPLETE A DACA APPLICATION OR GIVE ME SOME ADVICE ON MY CASE?**

It is strongly recommended to speak with an immigration attorney or DOJ accredited representative for an individual assessment before submitting a renewal DACA application. Furthermore, since DACA does not provide a pathway to citizenship or lawful immigration status, it is also advisable to get a full legal screening to understand potential eligibility for other forms of immigration relief. All undocumented individuals, whether they have DACA or not, should speak to a legal service provider to be oriented about their legal options.

Only immigration attorneys or DOJ accredited representatives can give legal advice on immigration issues. Unfortunately, there has been an upsurge of immigration fraud in our communities where unqualified individuals are giving immigration advice. Please remember that submitting any immigration application without expert assistance can be highly risky.

Visit <https://www.bit.ly/ianimmhelp> or <https://www.informedimmigrant.com/service-organization-search/> to find a trusted legal service provider in your area.

## **16. WHAT ARE SOME DEMANDS PEOPLE CAN MAKE TO LAWMAKERS TO PROTECT IMMIGRANT COMMUNITIES?**

We must continue to demand that state and local officials protect all immigrant communities, not just DACA recipients, from immigration enforcement. We must also advocate for inclusive federal legislation that provides a pathway to citizenship. Any policies that further harm, criminalize, or deport immigrant community members must be rejected.

Additionally, because we are living through a pandemic, we have to insist that the government extend protections and resources to immigrants who put their lives at risk to ensure this country continues to operate. We must demand that Congress support the passage of the HEROES Act, which would protect and include immigrants previously left out of federal relief packages, and also provide for the automatic extension of work permits for both DACA recipients and TPS holders. These measures would ensure that immigrant community members have protection from deportation and the ability to work and provide for their families.