

REFUGEE LAW AND COMPARATIVE ASPECTS OF SOCIAL JUSTICE  
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Unit 15: Other forms of relief for victims of crime and disaster: Temporary Protected Status, Special Immigrant Juvenile status, relief under the Violence against Women Act, U visas, Deferred Action for Childhood Arrivals, and more.

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## Other forms of relief for victims of abuse, crime, and disaster

Temporary Protected Status, Special  
Immigrant Juvenile Status, VAWA self-  
petitioning, U visas, DACA, and more  
(Abriel 2018)

- ☞ In addition to refugee status, asylum, withholding of removal, and CAT, Congress has enacted some general protection programs.
- ☞ In addition, Congress passes forms of relief directed to specific nationalities or events.

## Overview of immigration protection remedies under U.S. law

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• General programs:</li> <li>• Refugee status</li> <li>• Asylum</li> <li>• Withholding of removal</li> <li>• Convention against Torture</li> <li>• Temporary Protected Status</li> <li>• T visas (human trafficking)</li> <li>• U visas (victims of crime)</li> <li>• VAWA self-petitioning</li> <li>• Special Immigrant Juvenile Status (SIJS)</li> <li>• Deferred Action for Childhood Arrivals (DACA)</li> </ul> | <ul style="list-style-type: none"> <li>• Special programs:</li> <li>• Amerasian Children</li> <li>• Cuban Adjustment Act</li> <li>• NACARA 202 for Nicaraguans and Cubans</li> <li>• NACARA 203 for Salvadorans, Guatemalans, USSR</li> <li>• HRIFA for Haitians</li> <li>• Iraqi and Afghan interpreters</li> <li>• And others</li> </ul> |
|--|--|

## Temporary Protected Status

## Benefits of Temporary Protected Status - INA § 244

- ☞ Temporary authorized stay during designation period
- ☞ Employment authorization
- ☞ Drawbacks:
  - ☞ Does not include spouses and children
  - ☞ Does not lead to permanent status, unless Senate approves by 3/5 majority.

## TPS designation requirements AG/DHS designates:

- Country or region where:
- ☞ ongoing armed conflict poses threat to nationals, or
  - ☞ earthquake, flood, drought, epidemic, or other environmental disaster causing substantial but temporary disruption, if foreign state unable to handle return and has requested designation, or
  - ☞ Extraordinary and temporary conditions that prevent nationals from returning safely.
- Designations may be for 6-18 months; can be extended.

## TPS individual requirements



- ☞ Physically present in U.S. since date of designation & continuously resided in U.S. since designated date
- ☞ Admissible, but docs. & labor certif. grds. don't apply; also, all inadmissibility grds. may be waived except for certain crim'l grds. §244(c)(2).
- ☞ Cannot have been convicted of any felony or 2 or more misdemeanors
- ☞ Cannot fall under asylum ineligibility grds. at INA § 208(b)(2)(A)



- ☞ Register during registration period.
- ☞ Re-register during registration periods.

## SPECIAL IMMIGRANT JUVENILE STATUS



INA § 101(a)(27)(J), 245(h).

## Benefits of Special Immigrant Juvenile Status



- ☞ Provides LPR status to children in state dependency and some delinquency proceedings.
- ☞ Permanent right to live and work legally in the U.S. and to travel.
- ☞ Same public benefits as refugee children, including educational assistance.
- ☞ Does not allow immigration of parents and may not allow immigration of siblings

## SIJS requirements



- ☞ Applicant is dependent on a juvenile court or committed to custody of state agency or dept. or individual or entity appointed by state agency or dept. May include delinquency and probate as well as dependency.
- ☞ Reunification with one or both parents is not viable due to abuse, neglect, abandonment, or similar basis under state law.
- ☞ It is determined in judicial or administrative proceedings that it is not in the child's best interest to be returned to his or her country.

## Obtaining permanent residence based on Juvenile Court's order



- ☞ Applicant is unmarried and files for SIJS status before turning 21.
- ☞ Applicant then applies for SIJS status with CIS and for adjustment of status (with CIS or if in removal proceedings with IJ).
- NOTE: No requirement of relation to USC or LPR
- Unlawful status not a bar
- Certain inadmissibility grounds do not apply; some others may be waived.

## Relief under the Violence against Women Act



## Self-petitioning under the Violence against Women Act



- ☞ Enacted 2000.
- ☞ Allows spouses, children, and parents of USC's and spouses and children of LPRs to self-petition for an LPR visa, rather than waiting for abuser to apply for them.

## Benefits of VAWA self-petition



- ☞ Compare with regular family-based immigration process:
  - Step 1: USC or LPR relative (the petitioner) files Form I-130 with INS/CIS
  - Step 2: If I-130 approved, alien spouse and children (the principal and derivative beneficiaries) apply for permanent resident visa.

- In contrast, for VAWA self-petitioning:

Step 1: Self-petitioner files own petition on form I-360; need not rely on USC or LPR abuser to file petition.

Step 2: If approved, self-petitioner and children apply for permanent residence based on approved I-360.

## VAWA Requirements for self- petitioning spouse



- ☞ Marriage or "intended marriage" to abuser, and
- ☞ Abusive spouse is USC or LPR, and
- ☞ Victim entered into marriage in good faith, and
- ☞ USC or LPR spouse subjected victim to Battery or extreme cruelty during marriage, and
- ☞ Good moral character, and



- ☞ Past or present residence with USC/LPR spouse, and
- ☞ Either current residence in U.S. or, if living outside U.S., abusive spouse is employee of USG or member of USAF OR some abuse occurred in U.S.

- 
- ❧
- ❧ "Intended spouse"
  - ❧ Believes he or she has married a USC or LPR and a marriage ceremony was actually performed, and
  - ❧ the marriage is not legitimate, because of the USC's or LPR's bigamy.
  - ❧ Not the same as "common law marriage"
  - ❧ "Marriage" includes common law marriages in common law states

## Requirements for VAWA self-petitioning child

- 
- ❧
- ❧ Applicant is a "child" (unmarried and under 21) of
  - ❧ USC or LPR parent
  - ❧ USC or LPR parent battered child or subjected child to extreme cruelty
  - ❧ Good moral character (presumed if under 14)
  - ❧ Some residence past or present with abusive parent

- 
- ❧
- ❧ Current residence in U.S. or, if living outside U.S., some abuse in U.S. or abusive parent is employee of USG or member of USAF.

## U visas

## U non-imm. visa for victims of crime

- 
- ❧
- ❧ Nonimmigrant status in U.S. for 3 years
  - ❧ Employment authorization
  - ❧ Possibility of nonimmigrant status for family members (spouse, children, and for appls under 21, parents and unmarried siblings under 18).
  - ❧ Possibility of becoming LPR after 3 yrs.

## U visa requirements INA §§ 101(a)(15)(U); 214(p)

- 
- ❧
1. Applicant has suffered substantial physical or mental abuse because of being victim of certain criminal activity;
  2. Applicant (or if under 16, parent or guardian) possesses information about crime and is or was helpful to investigation or prosecution.
  3. Federal, state, or law enforcement authority certifies # 2.
  4. Criminal activity violated U.S. law or occurred in U.S. or territories or possessions.
  5. Plus, applicant must be admissible (but special exceptions and waivers).

## Criminal activity for U visas

- ☞ Rape, torture, trafficking, incest, dom. violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, FGM, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of the above-mentioned crimes, or any similar activity in violation of federal, state or local criminal law.

## Deferred Action for Childhood Arrivals (DACA)

## What is DACA?

- ☞ Deferred Action for Childhood Arrivals.
- ☞ A form of prosecutorial discretion.
- ☞ Authorized by Executive Order in 2012.
- ☞ 700,000 DACA recipients, 250,000 in California.
- ☞ Period of deferred action, employment authorization, possible grant of advance parole to allow travel.

## DACA – its history

- ☞ Unsuccessful CIR and Dreamer federal legislation.
- ☞ June 15, 2012 Executive Order created DACA.
- ☞ Nov. 20, 2014 Executive Order creating DAPA, expands DACA.
- ☞ Feb. 16, 2015 U.S.D. Tex. Enjoins DAPA and expanded DACA in lawsuit by 26 states. DACA not challenged. Fifth Circuit affirms.
- ☞ 2016 Supreme Court grants cert., affirmed 4-4. Declines to rehear after Justice Gorsuch appointed.
- ☞ 2016 Following election, parties agreed to stay in litigation.
- ☞ Jan. 25, 2017 Pres. Trump lets DACA stand in Executive Order on new enforcement priorities.
- ☞ June 29, 2017 Texas and other states tell AG Sessions that if DHS did not rescind DACA by Sept. 5, 2017, the states would seek to amend lawsuit to include DACA.
- ☞ Sept. 4, 2017 AG Sessions recommends that DHS wind down DACA.
- ☞ Sept. 5, 2017 DHS rescinds DACA.
- ☞ But lawsuits enjoin rescission.

## Sept. 5, 2017, DHS memo ending DACA

- ☞ DHS will adjudicate all properly filed pending DACA initial and renewal requests accepted by DHS by Sept. 5, 2017.
- ☞ DHS will also adjudicate renewal requests from current beneficiaries whose benefits will expire between Sept. 5, 2017, and March 5, 2018, as long as they are filed by Oct. 5, 2017.
- ☞ Will reject all DACA initial requests filed after Sept. 5, 2017.
- ☞ No new advance parole grants for DACA recipients.
- ☞ Will not terminate previously issued DACA grants prior to expiration of validity.
- ☞ But will exercise discretionary authority to terminate or deny deferred action if determined appropriate.

## 5 lawsuits challenge DACA rescission

- ☞ 15 states and D.C.: New York, Massachusetts, Washington, Connecticut, Delaware, Hawaii, Illinois, Iowa, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and Virginia, and D.C.: claim that revoking DACA would violate components of the Fifth Amendment, along with the Administrative Procedures Act, which "prohibits federal agency action that is arbitrary, unconstitutional, and contrary to statute."
- ☞ U.C. California: rescission is "nothing more than [an] unreasoned executive whim" resulting in Dreamers facing expulsion. Loss of vital members of University community – approximately 4,000 students who are undocumented.
- ☞ California, Maine, Maryland, and Minnesota: rescission violates APA – lack of proper public notice and comment and improper use of information from DACA recipients – reneging on promise made to them.
- ☞ NAACP: defending the 80 percent of DACA recipients who were brought to the U.S. from Mexico, the 36,000 people from Africa, and others from Caribbean nations. "[U]nlawfully reneging on their promise to protect young, undocumented immigrants of color living in the United States." Violation of Due Process Clause of Fifth Amendment, APA, and others.
- ☞ Individual DACA recipients – U.S.D.C. N.D. Cal. "Broken promise" and "unprecedented violation of [Plaintiff's] constitutional rights."

## Congressional bills



- ☞ DREAM Act
- ☞ Recognizing America's Children (RAC) Act
- ☞ BRIDGE Act

## DACA requirements & benefits



- ☞ Entered U.S. before age 16.
- ☞ Younger than 31 when program began in 2012.
- ☞ Had lived in U.S. continuously since June 15, 2007.
- ☞ No felony, no serious misdemeanors, no more than three misdemeanors.
- ☞ Have high school or college degree, be enrolled in school, or be military veteran.
- ☞ DACA granted in two-year increments, renewable.
- ☞ Could also apply for employment authorization.
- ☞ Could also apply for advance permission to return.

## Other forms of relief



## Cuban Adjustment Act Pub. L. 89-732 (1966)



- ☞ Gives LPR status
- ☞ To nationals of Cuba and their spouses and children, even if not Cuban nationals, if relationship existed when Cuban spouse or parent obtained LPR status
- ☞ Must be admitted or paroled into U.S. (but can be paroled nunc pro tunc)
- ☞ Must be physically present in U.S. for 1 yr. before application
- ☞ Must be admissible, but special exceptions and waiver provisions.

## Amerasian children INA § 204(f)



- ☞ AG has reason to believe person born in Korea, Vietnam, Laos, Kampuchea, or Thailand after 1950 and before Oct. 22, 1982,
- ☞ AG has reason to believe person fathered by USC (but need not establish father's identity),
- ☞ AG receives acceptable guarantee of legal custody and financial responsibility
- ☞ If person is under 18, person is placed with appropriate sponsor in U.S. and mother or guardian has in writing irrevocably released person for immigration.

## Examples of evidence to establish father a USC



- ☞ Person's birth records
- ☞ Affidavits from persons with relevant personal knowledge
- ☞ Letter from or photographs of father
- ☞ Evidence of financial support from father
- ☞ Western characteristics in person's physical appearance.

### NACARA Sec. 203 Cancellation of Removal

- ☞ Nicaraguan and Central American Relief Act, Pub. L. 105-100 (1997)
- ☞ Gives permanent residence for
- ☞ For Salvadorans, Guatemalans, and persons from former USSR

### NACARA § 203 requirements

- ☞ Nationality of one of specified countries
- ☞ 7 years continuous physical presence in U.S. (10 yrs. if fall under criminal or security inadmissibility or deportation grounds) (Only brief, casual & innocent absences)
- ☞ Good moral character during that time
- ☞ Removal would cause extreme hardship to self or USC or LPR spouse, parent, or child (presumed for ABC class members)
- ☞ Meet country-specific requirements

### NACARA Sec. 203 requirements for Guatemalans

- ☞ Category 1:
  - ☞ Entered U.S. on or before October 1, 1990
  - ☞ Registered for ABC benefits on or before Dec. 31, 1991
  - ☞ Was not apprehended at time of entry after Dec. 19, 1999
- ☞ Category 2:
  - ☞ Filed asylum application before April 1, 1990

### NACARA Sec. 203 Requirements for Salvadorans

- ☞ Category 1:
  - ☞ Entered U.S. on or before Sept. 19, 1990
  - ☞ Registered for ABC benefits on or before Oct. 31, 1991 (by direct registration or by applying for TPS)
  - ☞ Was not apprehended at time of entry after Dec. 19, 1990.
- ☞ Category 2:
  - ☞ Filed asylum application on or before April 1, 1990

### NACARA Sec. 203 Reqmts for Nationals of former USSR

- ☞ Entered U.S. on or before Dec. 31, 1990
- ☞ Applied for asylum on or before Dec. 31, 1991
- ☞ At time of filing, was national of Soviet Union, Russia, any republic of former USSR, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or former Yugoslavia.

### Three Special Immigrant Visa programs for Iraqi and Afghan nationals

- ☞ Permanent program for Iraqis and Afghans who worked directly with U.S. Armed Forces for at least 1 yr as translators or interpreters. 50 principals/yr plus family.
- ☞ Temporary program for Iraqis employed in Iraq by, or on behalf of, U.S. gov't for at least 1 yr during specified period. Initially 5,000; no more than 2500 principals after January 1, 2014.
- ☞ Temporary program for Afghans employed in Afghanistan by, or on behalf of, U.S. gov't or by Int'l Security Assistance Force. Initially, 1,500 principals, no more than 7,000 principals after December 19, 2014.
- ☞ 37,000 visas granted through end of FY2015 (15,000 principals).



### Examples of past relief for specific nationalities – deadline passed



- ☞ Nicaraguan and Central American Relief Act, Pub. L. 105-100, § 202 - adjustment to LPR for Nicaraguans and Cubans with long residence in U.S.
- ☞ Haitian Refugee and Immigrant Fairness Act, Pub. L. 105-277, § 902 - adjustment to LPR for Haitians with long residence in U.S.
- ☞ Indochinese Adjustment Act (2005) - adjustment to LPR for nationals of Vietnam, Cambodia, Laos, paroled into U.S. under Orderly Departure Program or from refugee camp.

ACLU of Southern  
California

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## LAWSUIT AGAINST TRUMP ADMINISTRATION

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### MEDIA CONTACT

ACLU SoCal Communications & Media Advocacy, 213-977-5252,  
[communications@aclusocal.org](mailto:communications@aclusocal.org) (<mailto:communications@aclusocal.org>)

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MARCH 12, 2018

### **200,000 People Could Be Forced Out of the Country by Trump Action**

SAN FRANCISCO — Nine people with Temporary Protected Status (TPS) and five United States citizen children of TPS holders are today filing a lawsuit against the federal government to stop the unlawful termination of TPS for more than 200,000 people living in the U.S. and to protect the tens of thousands of U.S. citizen children whose parents would be forced to leave under the administration's policy.

The lawsuit was filed in U.S. District Court in San Francisco by the ACLU Foundation of Southern California, the National Day Laborer Organizing Network (NDLON), and the law firm of Sidley Austin LLP.

The Trump administration adopted a new, far narrower interpretation of the federal law governing TPS, and then used that interpretation to terminate TPS status for all individuals from El Salvador, Haiti, Nicaragua, and Sudan. Many of the TPS-holders from those countries have resided in the U.S. for 20 or more years, but will be forced out of the country if the administration's new policy remains in effect. Their U.S. citizen children will then be forced to either separate from their parents or leave the only country they have ever known.

"These American children should not have to choose between their country and their family," said **Ahilan Arulanantham**, advocacy and legal director of the ACLU of Southern California.

"I have lived here almost twice as long as I ever lived in El Salvador. My home and family are here," said Orlando Zepeda, a 51 year old father of two children and a member of the National TPS Alliance, a coalition established and led by TPS holders with a mission to defend TPS. "The decision to end TPS for El Salvador and other countries was devastating. Today we join together to say that it was also illegal."

"With the stroke of a pen, this administration upended the lives of hundreds of thousands of people lawfully residing in the United States for years and sometimes decades," said Emi MacLean, staff attorney for NDLON. "But in terminating TPS in the way that it did, this administration was exercising authority it did not have."

The complaint also argues that the administration's restrictive view of the TPS laws was unconstitutional as it was adopted to further the administration's anti-immigrant, white supremacist agenda. Earlier this year, during a negotiation over the fate of people who have TPS status, Trump referred to the affected nations as "shithole countries."

The plaintiffs are members of diverse organizations fighting to defend TPS, including the National TPS Alliance, CARECEN-Los Angeles, the International Union of Painters and Allied Trades (IUPAT), UNITE-HERE, and African Communities Together.

Their lawsuit is the first to challenge the TPS terminations on behalf of the American children of TPS holders, and the first to challenge all four of the TPS terminations that have taken place under the Trump administration.

Read the lawsuit at

[https://www.aclusocal.org/sites/default/files/aclu\\_socal\\_tps\\_20180312\\_complaint.pdf](https://www.aclusocal.org/sites/default/files/aclu_socal_tps_20180312_complaint.pdf)  
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### New Suit Alleges Unlawful Conduct by Trump Administration Officials, Seeks Injunctive Relief from Deportation for 58,000 Haitian TPS Recipients

Trump Administration Officials, Seeks Injunctive Relief from Deportation of Over 50,000 Haitian TPS Recipients

### The Administration's Decision to Terminate Program Exposes Complete Lack of Knowledge of Immigration Law Resulting in Violations of the Administrative Procedure Act, Plaintiffs' 5th Amendment Rights & Regulatory Flexibility Act

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March 15, 2018

#### Contacts:

Sejal Zota, (919) 698-5015, [szota@nipnlg.org](mailto:szota@nipnlg.org)

Ira Kurzban, (305) 992-3356

Steve Forester, (786) 877-6999

(Boston, MA) – A new suit filed this morning in the Eastern District of New York alleges violations of law and the Constitution by Trump administration officials seeking to operationalize the President's racial animus toward Haitians, in spite of mandatory statutory criteria and procedures required to evaluate Temporary Protected Status (TPS) for Haitians. The Administration announced that TPS for Haitian nationals will expire on July 22, 2019, endangering the lives of over 50,000 Haitians and their 27,000 U.S. citizen children.

[Download the complaint »](#)

The National Immigration Project of the National Lawyers Guild (NIPNLG) and the law firms of Kurzban, Kurzban, Weinger, Tetzeli and Pratt P.A. (Kurzban), Mayer Brown and the Law Office of Clarel Cyriaque are bringing the suit on behalf of a dozen plaintiffs, including Haiti Liberté, the largest weekly Haitian newspaper in this hemisphere and Family Action Network Movement, Inc. (FANM). Providing significant support was the Institute for Justice and Democracy in Haiti (IJDH), a Boston-based human rights nonprofit.

**“The Administration’s about-face on TPS exposed their discriminatory agenda to reduce the number of Haitians in the United States and their disregard for the safety, security, and due process rights of Haitians.”**

“The Administration’s about-face on TPS exposed their discriminatory agenda to reduce the number of Haitians in the United States and their disregard for the safety, security, and due process rights of Haitians,” said Sejal Zota, legal director of the NIPNLG.

Consistent with previous reviews, the Administration in May of 2017 extended TPS based on an assessment that “extraordinary” conditions persist, including an ongoing housing shortage,

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- Sejal Zota  
Legal Director, NIPNLG

severe cholera epidemic, lack of access to safe drinking water, an economic crisis including 40% unemployment, a population of 3.2 million who lack food security, and environmental risks including the impact of Hurricane Matthew, the worst hurricane

to hit Haiti in 52 years.

President Trump is credited with making several discriminatory statements, including all Haitians "all have AIDS," "[w]hy would we want any more Haitians?" and to "take them out" of a proposed bipartisan immigration deal. These statements, along with the President's reference to "sh\*t-hole countries" and other actions, reveal the racial animus underlying the TPS termination. Moreover, the suit alleges that officials did not follow the required procedures set forth in the immigration statute in deciding to terminate Haitian TPS and violated the law and Haitian TPS holders' constitutional rights as a result.

Steve Forester of IJDH stated the following: "Haiti is a textbook case for TPS on the facts, as editorial boards and political and civic leaders have recognized. Getting to "no" required DHS to ignore the reality on the ground and move the goalposts on the applicable criteria."

Co-counsel on the case, Ira Kurzban, adds "The decisions of Trump, his staff and the federal agencies disregard the administration's own findings from months earlier and are nothing short of capricious, arbitrary and an abuse of discretion. Make no mistake, Trump's decision to terminate Haitian TPS is motivated by his repellent bias towards Haitians and other people of color."

Beyond the claims of racial animus, the suit also brings forward six different claims of unlawful action on the part of defendants, deputy DHS secretary Elaine Duke, DHS Secretary Kirstjen Nielsen, President Trump, and the Department of Homeland Security.

Among them are:

- › The Administration's actions are arbitrary and capricious and violate the Administrative Procedures Act.
- › The Administration's actions violate the due process rights of Haitian TPS recipients and denied them equal protection under the laws.
- › The Administration failed to conduct any regulatory flexibility analysis to determine how the termination of Haitian TPS will affect small entities, such as Haiti Liberté, in violation of the Regulatory Flexibility Act.
- › The Administration failed to follow required notice-and-comment procedures.
- › The Administration's actions are *ultra vires*.

A full copy of the suit is available here:

[Download the complaint »](#)

The National Immigration Project of the National Lawyers Guild (NIPNLG) is a national non-profit organization that provides technical assistance and support to community-based immigrant organizations, legal practitioners, and all advocates seeking and working to advance the rights of noncitizens.

The Institute for Justice & Democracy in Haiti (IJDH), is a partnership of Haitian and US human rights advocates working to implement a just and democratic government in Haiti and to uphold the rights of Haitian nationals living in the United States. IJDH's Steve Forester has advocated for the rights of Haitians in the United States since 1979.

#### Contact

National Immigration Project  
of the National Lawyers Guild  
14 Beacon Street, Suite 602  
Boston, MA 02108

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**EXCERPTS from National Immigration Forum Fact Sheet: Temporary Protected Status.**

**Updated April 26, 2018**

**How many individuals are currently granted TPS?**

The U.S. currently provides TPS to over 300,000 foreign nationals from the following countries:

Country	Estimated Number
El Salvador	195,000
Honduras	57,000
Haiti	50,000
Nepal	8,950
Syria	5,800
Nicaragua	2,550
Yemen	1,000
Sudan	450
Somalia	270
South Sudan	75-200

**When do TPS designations expire?**

<b>Country</b>	<b>Most Recent Designation Date</b>	<b>Secretary's Decision Due</b>	<b>Expiration Date</b>
<b>Sudan</b>	<b>5/3/2013</b>	<b>N/A</b>	<b>11/2/2018</b>
<b>Nicaragua</b>	<b>1/5/1999</b>	<b>N/A</b>	<b>1/5/2019</b>
<b>Nepal</b>	<b>6/24/2015</b>	<b>N/A</b>	<b>6/24/2019</b>
<b>Haiti</b>	<b>7/23/2011</b>	<b>N/A</b>	<b>7/22/2019</b>
<b>El Salvador</b>	<b>3/9/2001</b>	<b>N/A</b>	<b>9/9/2019</b>
<b>Syria</b>	<b>8/1/2016</b>	<b>8/1/2019</b>	<b>9/30/2019</b>
<b>Honduras</b>	<b>1/5/1999</b>	<b>5/6/2018</b>	<b>7/5/2018</b>
<b>Yemen</b>	<b>3/4/2017</b>	<b>7/5/2018</b>	<b>9/3/2018</b>
<b>Somalia</b>	<b>9/18/2012</b>	<b>7/19/2018</b>	<b>9/17/2018</b>
<b>South Sudan</b>	<b>5/3/2016</b>	<b>3/3/2019</b>	<b>5/2/2019</b>

The Secretary can extend TPS after a review of country conditions. A decision about a 6, 12 or 18 month extension must be made at least 60-days before the TPS designation expiration date.

For example, the Secretary most recently ended TPS for Nepal. Previously, the Secretary extended but not re-designated TPS status for Syrians. She also terminated TPS for El Salvador, Haiti, Sudan and Nicaragua, but extended TPS for eligible immigrants from Honduras and South Sudan through July 2018 and May 2019, respectively.



## DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) Fact Sheet

*Deferred Action is a form of prosecutorial discretion that provides a work permit and relief from removal for two years to certain eligible undocumented youth.*

### **What are the benefits of Deferred Action for Childhood Arrivals (DACA)?**

- Protects the youth from being placed into removal proceedings and from being removed.
- Provides an employment authorization document that allows the youth to work.
- Can obtain a Social Security Number.
- DACA can be renewed after two years.
- In certain states, a DACA-recipient can apply for a state identification card and a driver's license.

### **Who is eligible for DACA?**

An undocumented youth that is currently living in the United States may be eligible for DACA. The youth can request DACA, even if they are currently in removal proceedings or have a final order of removal. If the youth is detained, he or she can also request DACA or ask to be released based on prima facie DACA eligibility.

### **What are the requirements for DACA?**

A youth can request DACA if he or she:

1. Is at least 15 years old at the time of filing his or her request.
  - a. *Exception:* a youth that is currently in removal proceedings or has a final order of removal, or a voluntary departure order can request DACA under the age of 15.
2. Was under the age of 31 as of June 15, 2012;
3. Came to the United States before his or her 16th birthday;
  - a. *However,* if the youth has entered and left the United States before age 16, he or she will have to show established residency in the U.S. before age 16.
4. Has continuously resided in the United States since June 15, 2007, up to the present time;
5. Was physically present in the United States on June 15, 2012, and at the time of making his or her request for DACA;
6. Entered without inspection before June 15, 2012, or his or her lawful immigration status expired as of June 15, 2012 (i.e. person was undocumented as of June 15, 2012);
7. Is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development (GED) certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
8. Has not been convicted (as an adult) of a felony, significant misdemeanor, three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety.

For more information, please visit the ILRC DACA web page at <http://www.ilrc.org/info-on-immigration-law/deferred-action-for-childhood-arrivals>.





# NATIONAL IMMIGRATION LAW CENTER

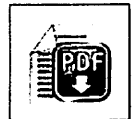


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For information about U.S. Citizenship and Immigration Services' Jan. 13, 2018, announcement that it is accepting DACA renewal applications, see our *FAQ: USCIS Is Accepting DACA Renewal Applications*, first posted Jan. 14, 2018.

## Status of Current DACA Litigation

Last updated APRIL 26, 2018



On September 5, 2017, U.S. Attorney General Jeff Sessions announced that the government was terminating the Deferred Action for Childhood Arrivals, or DACA, program. That same day, then-Acting Secretary of Homeland Security Elaine Duke issued a memorandum directing the U.S. Department of Homeland Security to reject all initial DACA applications and associated applications for work authorization received after Sep. 5, 2017; to reject all renewal applications after Oct. 5, 2017, from current DACA recipients whose status expires between Sep. 5, 2017, and March 5, 2018; and to reject all other renewal applications from DACA recipients.<sup>[1]</sup>

In the days and months following, multiple lawsuits challenging the Trump administration's actions to terminate DACA were filed across the country. Two courts have since enjoined, or halted, the government's termination of DACA and required U.S. Citizenship and Immigration Services (USCIS) to continue accepting DACA applications from individuals who have previously had DACA. A third court has ordered the government to follow its original 2012 policy of not sharing DACA recipients' private information for enforcement purposes, and a fourth court has issued an order to strike down the termination of DACA and reinstate the original program, but it "stayed" its own order for 90 days to give the government a chance to further explain its decision to terminate the DACA program.

This update summarizes the current status primarily of (1) lawsuits filed in federal court in California, collectively known as *Regents of the University of California v. Department of Homeland Security*, (2) two lawsuits filed in federal court in New York, *Batalla Vidal v. Nielsen* and *State of New York v. Trump*, (3) a lawsuit filed in federal court in Maryland, *CASA de Maryland v. Trump*, and (4) two lawsuits filed in federal court in Washington, DC, *NAACP v. Trump* and *Trustees of Princeton v. Trump*.

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## Regents of the University of California, et al. v. Department of Homeland Security, et al.<sup>[2]</sup>

On January 9, 2018, Judge William Alsup of the U.S. District Court for the Northern District of California issued a preliminary injunction requiring the federal government to maintain the Deferred Action for Childhood Arrivals, or DACA, program on a nationwide basis by allowing individuals to submit applications to renew their enrollment in DACA, subject to a few exceptions.<sup>[3]</sup> Generally, parties objecting to a district court's order must wait until the litigation is completed before asking the court of appeals for review.<sup>[4]</sup> However, a preliminary injunction order is immediately appealable (a process referred to as an "interlocutory appeal"), meaning that the government can ask the Ninth Circuit Court of Appeals to review Judge Alsup's order immediately.<sup>[5]</sup>

**Supreme Court denies government's request for unusual "cert. before judgment" review.** In this case, however, the government took the unusual step of seeking to skip review in the Ninth Circuit and instead appeal directly to the U.S. Supreme Court through a rarely used legal mechanism called "cert. before judgment."<sup>[6]</sup> The government filed its request, or petition for certiorari, with the Supreme Court on Jan. 18, 2018.<sup>[7]</sup> This kind of request is rarely granted, as Supreme Court rules warn that the Court will grant this kind of early review only "upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court."<sup>[8]</sup>

On Feb. 26, 2018, the Supreme Court announced that it had "denied cert.,"<sup>[9]</sup> meaning that it declined to hear the government's direct appeal from the district court. Therefore, the case will return to the lower courts, and appeals will be heard first by the Ninth Circuit Court of Appeals. In other words, although the Supreme Court could hear the case eventually, the appeals process will be the normal one, beginning with the court of appeals.

**Government continues to accept DACA renewal applications.** Although the government could have sought a stay of Judge Alsup's preliminary injunction — i.e., while it could have asked the judge or the Supreme Court to allow the government to continue with its process of shutting down DACA<sup>[10]</sup> — it did not do so. Therefore, the government must continue to accept DACA renewal applications in accordance with the preliminary injunction.

**Other orders subject to appeal.** In the order issued on Jan. 9, Judge Alsup also ruled for the plaintiffs in holding that the decision to terminate DACA was reviewable by the courts under the Administrative Procedure Act because the decision was not committed to the agency's discretion by law, as well as under the Immigration and Nationality Act. On Jan. 12, Judge Alsup issued an additional order that addresses the issue of whether the plaintiffs had pled enough facts to support additional legal claims. Usually, these kinds of intermediate orders in a case would not be directly appealable to the court of appeals, but Judge Alsup also granted the government's request to appeal these portions of his January 9 decision and his January 12 decision to the Ninth Circuit through a special appeal mechanism that allows immediate appeals of intermediary orders.<sup>[11]</sup> The parties have already briefed their arguments, and the Ninth Circuit will hear oral arguments on May 15, 2018, in Pasadena, Calif.

## Batalla Vidal, et al. v. Nielsen, et al., and State of New York, et al. v. Trump, et al.<sup>[12]</sup>

On Feb. 13, 2018, a U.S. district court in Brooklyn, New York, issued a second preliminary injunction requiring USCIS to accept DACA applications from people who have had DACA previously.<sup>[13]</sup> The preliminary injunction was the same in scope as the order from the U.S. district court in California. The court in New York held that there was a substantial likelihood that the plaintiffs would prevail on their claim that the Trump administration ended DACA in a way that was arbitrary and capricious, and therefore unlawful.

The order was issued in two lawsuits currently pending before Judge Nicholas Garaufis. The *Batalla Vidal* case was brought by six New Yorkers who had benefited from DACA and stood up to challenge the administration's decision to end the program. The plaintiffs in that case are represented by NILC, along with the Jerome N. Frank Legal Services Organization at Yale Law School and Make the Road New York. The *State of New York* case was brought by a coalition of seventeen attorneys general.<sup>[14]</sup>

The government has appealed the decision to the Second Circuit Court of Appeals. The parties have completed their briefing and are waiting for an oral argument to be scheduled.

### **CASA de Maryland, et al. v. Dept. of Homeland Security, et al.**<sup>[15]</sup>

On March 5, 2018, the U.S. District Court for the District of Maryland issued an opinion in *CASA de Maryland v. Trump* dismissing most of the plaintiffs' claims in that case, including the claim that the DACA termination was unlawful. However, the court did grant a nationwide preliminary injunction to DACA recipients on their claim regarding the sharing and usage of the information DACA recipients have provided to the government when applying for DACA. The court ordered the U.S. Department of Homeland Security (DHS) to follow its original 2012 guidance about not sharing or using DACA recipients' private information for enforcement purposes against them or their family members unless certain circumstances exist, such as that the person poses a national security threat or has committed certain crimes.

The *CASA de Maryland* court order prohibits DHS from rescinding, modifying, or superseding this guidance for the time being. In addition, under the order, if DHS wants to use any DACA recipient's information against them for enforcement purposes, DHS is required to make this request to the court directly and have the court do a confidential review of the request.

### **NAACP v. Trump, et al., and Trustees of Princeton, et al. v. United States of America, et al.**<sup>[16]</sup>

On April 24, 2018, Judge John Bates of the U.S. District Court for the District of Columbia issued a final judgment that (a) grants, in part, summary judgment in favor of Deferred Action for Childhood Arrivals (DACA) recipients and organizations that sued to reverse the Trump administration's termination of the DACA program and (b) orders that the memorandum terminating the program be vacated. The order was issued in *NAACP v. Trump* and *Princeton v. Trump*, two cases that the court related to each other such that the order applies to both.

The judge's decision would reinstate the status quo as it was before September 5, 2017, when the original DACA program was in place and U.S. Immigration and Citizenship Services (USCIS) was accepting first-time applications for DACA (rather than only DACA renewal applications). But, critically, **the court also stayed (or paused) its own order for 90 days** to allow the government to come up with a better explanation than the one it presented to the court for why it ended DACA.

This means that people who are otherwise DACA-eligible still may not submit a first-time application for DACA. If the judge's order vacating the DACA-rescission memo does go into effect, it will not become effective until 90 days after the judge issued the order, i.e., not until July 23, 2018. In the meantime, the government may either appeal Judge Bates's decision or issue a new DACA-rescission memo, either of which could have the effect of canceling the judge's decision to vacate the original DACA-rescission memo. The result could be that USCIS would not be required to resume accepting DACA applications from first-time applicants.

However, due to the nationwide injunctions issued by the U.S. District Courts for the Northern District of California and the Eastern District of New York earlier this year, **USCIS still is required to accept, and is currently processing, DACA**

**renewal applications** from people who have previously received deferred action and a work permit through DACA, while litigation in those courts works through the normal appeals process.

For more information on how to apply for DACA renewal, see NILC's **Frequently Asked Questions: USCIS Is Accepting DACA Renewal Applications**.<sup>[17]</sup> For more detail on what the April 24, 2018, decision from the D.C. District means, see NILC's **Alert: U.S. District Court in D.C. Orders That the DACA Termination Memo Be Vacated — but Not for at Least 90 Days**.<sup>[18]</sup>

## NOTES

[1] Memorandum from Elaine C. Duke, Acting Secretary, U.S. Dept. of Homeland Security, to James W. McCament, Acting Director, U.S. Citizenship and Immigration Services, et al., re. Rescission of the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," Sep. 5, 2017, <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

[2] The California litigation includes five cases that were consolidated before Judge William Alsup in the Northern District of California: *Regents of the University of California, et al. v. Dep't of Homeland Security, et al.*, No. 3:17-cv-05211; *State of California, et al. v. U.S. Dep't of Homeland Security, et al.*, No. 3:17-cv-05235; *City of San Jose v. Donald J. Trump, et al.*, No. 3:17-cv-05380; *Garcia, et al. v. United States of America, et al.*, No. 3:17-cv-05380; and *Cty. of Santa Clara, et al. v. Donald J. Trump, et al.*, No. 3:17-cv-05813.

[3] The preliminary injunction is available at [www.nilc.org/wp-content/uploads/2018/01/Regents-v-DHS-prelim-injunction-2018-01-09.pdf](http://www.nilc.org/wp-content/uploads/2018/01/Regents-v-DHS-prelim-injunction-2018-01-09.pdf). For more information on it and its implications for DACA recipients, see *FAQ: USCIS Is Accepting DACA Renewal Applications* (NILC, last revised Jan. 16, 2018), [www.nilc.org/faq-uscis-accepting-daca-renewal-applications/](http://www.nilc.org/faq-uscis-accepting-daca-renewal-applications/); *USCIS and DACA Renewal Applications: What You Need to Know* (NILC, Jan. 14, 2018), [www.nilc.org/five-things-know-latest-uscis-announcement/](http://www.nilc.org/five-things-know-latest-uscis-announcement/); and *Alert: Court Orders the Dept. of Homeland Security to Allow Individuals with DACA to Apply to Renew It* (NILC, Jan. 10, 2018), [www.nilc.org/daca-preliminary-injunction-regents-v-dhs/](http://www.nilc.org/daca-preliminary-injunction-regents-v-dhs/).

[4] See 28 U.S.C. § 1291, <https://www.law.cornell.edu/uscode/text/28/1291>.

[5] See 28 U.S.C. § 1292(a), <https://www.law.cornell.edu/uscode/text/28/1292>.

[6] The petition for certiorari before judgment was filed pursuant to 28 U.S.C. § 2101(e), <https://www.law.cornell.edu/uscode/text/28/2101>, and 28 U.S.C. § 1254(1), <https://www.law.cornell.edu/uscode/text/28/1254>. For an explanation of "cert. before judgment," see Kevin Russell, "Overview of Supreme Court's Cert. Before Judgment Practice," *SCOTUSblog*, Feb. 9, 2011, [www.scotusblog.com/2011/02/overview-of-supreme-court-s-cert-before-judgment-practice/](http://www.scotusblog.com/2011/02/overview-of-supreme-court-s-cert-before-judgment-practice/).

[7] Petition for writ of certiorari before judgment: [https://www.supremecourt.gov/DocketPDF/17/17-1003/28381/20180119100226711\\_DACA%20Rule%2011%20Petition.pdf](https://www.supremecourt.gov/DocketPDF/17/17-1003/28381/20180119100226711_DACA%20Rule%2011%20Petition.pdf).

[8] See Supreme Court Rule 11, <https://www.supremecourt.gov/filingandrules/2017RulesoftheCourt.pdf>.

[9] See Supreme Court, Order List (Feb. 26, 2018), [https://www.supremecourt.gov/orders/courtorders/022618zor\\_j426.pdf](https://www.supremecourt.gov/orders/courtorders/022618zor_j426.pdf).

[10] See 28 U.S.C. § 2101(f), <https://www.law.cornell.edu/uscode/text/28/2101>.

[11] See 28 U.S.C. § 1292(b), <https://www.law.cornell.edu/uscode/text/28/1292>.

[12] *Batalla Vidal, et al. v. Nielsen, et al.*, 1:16-cv-04756 (E.D.N.Y.); *State of New York, et al. v. Trump, et al.*, 1:17-cv-05228 (E.D.N.Y.).

[13] See <https://www.nilc.org/wp-content/uploads/2018/02/Batalla-Vidal-v-Nielsen-updated-pi-order-2018-02-13.pdf>.

[14] The lawsuit is led by New York Attorney General Schneiderman, Massachusetts Attorney General Maura Healey, and Washington Attorney General Bob Ferguson, and filed by attorneys general from New York, Massachusetts, Washington, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and Virginia. See "A.G. Schneiderman Files Lawsuit to Protect Dreamers and Preserve DACA," New York State Office of the Attorney General press release, Sep. 6, 2017, <https://ag.ny.gov/press-release/ag-schneiderman-files-lawsuit-protect-dreamers-and-preserve-daca>, and "AG Coffman Statement on Governor Joining Democrat DACA Lawsuit," Colorado Attorney General's Office press release, Sep. 13, 2017, <https://coag.gov/press-room/press-releases/09-13-17-0>.

[15] *CASA de Maryland, et al. v. Dept. of Homeland Security, et al.*, 8:17-cv-02942 (D.Md.).

[16] *NAACP v. Trump, et al.*, 1:17-cv-01907 (D.D.C.); *Trustees of Princeton Univ., et al. v. United States of America, et al.*, 1:17-cv-02325 (D.D.C.).

[17] [www.nilc.org/issues/daca/faq-uscis-accepting-daca-renewal-applications/](http://www.nilc.org/issues/daca/faq-uscis-accepting-daca-renewal-applications/).

[18] [www.nilc.org/issues/daca/dc-court-orders-daca-termination-memo-vacated/](http://www.nilc.org/issues/daca/dc-court-orders-daca-termination-memo-vacated/).

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## DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

Frequently Asked Questions *UPDATED*

May 2018

Recent government announcements and court cases on DACA have created confusion around who can apply, when they can apply, and how they can apply for DACA. To mitigate this confusion, below is an informational FAQ for your reference. Please note that lawsuits regarding DACA are still pending in the courts, and information is changing.<sup>1</sup> For now, the DACA program is still partially available and will continue according to the U.S. Citizenship and Immigration Services (USCIS) guidelines issued in January 2018.<sup>2</sup>

Although in April 2018 a federal judge opened the possibility of USCIS accepting DACA initial requests, it is **not yet official**. Currently, **NO DACA INITIAL REQUESTS** are being accepted from individuals who have never applied. **ONLY DACA RENEWALS** are being accepted by USCIS (from anyone who ever had an approved DACA request). Please continue to visit the ILRC website at <https://www.ilrc.org/daca> for updates.

### Is it true that the government is now accepting DACA initial requests?

**No. NO INITIAL REQUESTS** are being accepted at the moment. Only DACA renewal requests are currently being accepted.

On April 24, 2018 a federal judge issued a decision that could reinstate the DACA program to order USCIS to once again accept first-time requests from individuals. However, the federal judge has paused this order for 90 days to allow the government time to explain why DACA should be terminated. This means that **in the next several weeks, there may be a response or new DACA memorandum from the government**. Make sure to keep on top of developments in this case. It is called *NAACP v. Trump*.

Earlier this year, two other federal judges restarted the DACA renewal program for those who have or previously had DACA. The government has appealed those decisions, and it is expected that a Circuit Court will issue a decision in the coming months. Until a decision is made, USCIS will continue to accept requests for DACA renewals and it is encouraged that DACA holders apply for a renewal as soon as possible.

For an overview timeline of the different decisions impacting the DACA program, see <https://www.ilrc.org/daca-timeline-infographic>.

### I think I may be eligible for DACA, but I never applied. Can I apply now?

**No.** At least not yet. Even if the government does not respond to the federal judge's decision, initial DACA requests will not be accepted for at least **90 days**. If the government takes 90 days to respond, even if the judge decides to order USCIS to accept initial DACA requests again, that would not be until July 23, 2018 or later.

There are a number of ways the government could respond within the 90 days to the federal judge's decision to reinstate the DACA program. It is hard to predict the timing or potential outcomes.

<sup>1</sup> On April 24, 2018, a Federal court issued a decision allowing for DACA initial requests. Though the decision opened the possibility, the Judge stayed the order for 90 days to give the government an opportunity to submit new evidence. To date, the DACA lawsuits continue to evolve, for more details on the cases, please visit the National Immigration Law Center page on DACA lawsuits challenging the termination at <https://www.nilc.org/issues/daca/cases-challenging-daca-program-termination/>.

<sup>2</sup> The USCIS guidelines issued in January, 2018 is available at <https://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction>.



## How can I remain informed about changes to the DACA program?

It is important to access information from a trusted source. In light of all the changes to DACA, there is a lot of confusion and some sources of information can potentially give misinformation about when a person is eligible to apply. Some of the sites you can visit for up to date information are:

- ILRC at <https://www.ilrc.org/daca>
- National Immigration Law Center at <https://www.nilc.org/>
- The United We Dream website at <https://unitedwedream.org/>

These sites will continue to update their information around DACA as the lawsuits evolve.

## What can I do in the mean time?

All individuals should go get an immigration consultation or screening as soon as possible. It is uncertain what will happen with the recent federal judge's decision or in the pending lawsuits, and it is important that you know what your options are. This will help you know if you would be eligible for DACA (in case initial requests are accepted again) or if you are eligible for another immigration option to get a visa or green card.

## Where can I find a list of free or low-cost immigration legal service providers?

To locate trusted immigration legal service providers in your area, visit the National Immigration Legal Services Directory page at: <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>. There you will find a list of service providers that can assist you with an immigration screening and/or your DACA renewal request. Please note that if you need assistance paying an immigration application, you can visit [www.lc4daca.org](http://www.lc4daca.org) to apply for 0% interest loan.

## Who is eligible to apply for DACA now?

Any individual who has DACA or was previously granted DACA can request a renewal. This means that you can request to renew your DACA if you:

- currently hold DACA;
- had DACA but it expired, or
- had DACA but it was terminated by USCIS or ICE.

If you never applied for DACA or you applied for DACA, but it was not approved, you are not eligible for DACA at this time. USCIS will not approve DACA for you now.

If your DACA was previously terminated by USCIS or ICE, speak with an immigration expert before filing your DACA renewal request. The reasons your DACA was terminated previously may impact your eligibility for or likelihood of having a DACA renewal approved now. If your DACA was terminated based on arrests, unproven allegations or a low offense that should not disqualify you from DACA, and the government did not send you a notice or an explanation, then the government may have terminated your DACA unlawfully.<sup>3</sup> If that is the case, you may be able to have your DACA reinstated. If you think this may be your situation, you can contact the American Civil Liberties Union (ACLU) at [DACArevoked@aclu.org](mailto:DACArevoked@aclu.org).

<sup>3</sup> You can read about the recent court case impacting DACA recipients whose DACA was terminated at <https://www.aclu.org/cases/inland-empire-immigrant-youth-collective-v-nielsen>.

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## When can I file my DACA renewal request? Is it true I can only submit a renewal request if my DACA expiration date is less than 150 days away?

Although USCIS encourages DACA recipients to file a renewal request between 150-120 days before their current DACA expires, USCIS is accepting renewal requests filed earlier than the 150 days. These renewal requests have been accepted and receipt notices have been issued.

Some individuals have filed a renewal request up to one year in advance to ensure that their request gets reviewed now that the DACA program has restarted and in case the program gets rescinded again. Please note that if you do choose to renew in advance, an approval of a DACA renewal may overlap with your current DACA. With that said, you should talk to a trusted legal representative before you submit your DACA renewal request to ensure you are still eligible for DACA and to check for any red flags with your request.

## What do I have to submit to renew my DACA?

To renew your DACA you will need to submit immigration forms I-821D, I-765, I-765WS, a copy of your work permit, and the \$495 filing fee.

### Special instructions for Form I-821D:

1. If your DACA is still current (*has not expired at the time you submit your DACA renewal request*), check this box in Part 1 and write your DACA expiration date:

2. ☐ **Renewal Request** - Consideration of Deferred Action for Childhood Arrivals

AND

For this Renewal request, my most recent period of Deferred Action for Childhood Arrivals expires on

(mm/dd/yyyy) ►

2. If your DACA expired on or after September 5, 2016 (*this means from September 5, 2016 to now*), check this box in Part 1 and write your DACA expiration date:

2. ☐ **Renewal Request** - Consideration of Deferred Action for Childhood Arrivals

AND

For this Renewal request, my most recent period of Deferred Action for Childhood Arrivals expires on

(mm/dd/yyyy) ►

3. If your DACA expired on or before September 5, 2016 (*this means anytime before September 5, 2016, like September 4<sup>th</sup> or September 3<sup>d</sup> of 2016 or before*), check this box in Part 1 and write your DACA expiration date:

1. ☐ **Initial Request** - Consideration of Deferred Action for Childhood Arrivals

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**AND**

For this Renewal request, my most recent period of Deferred  
Action for Childhood Arrivals expires on

(mm/dd/yyyy) ▶

**Note:** If your DACA expired on or before September 5, 2016, you will need to submit documentation of your education, physical presence on June 15, 2012, and continuous presence from June 15, 2007 to present.

### Should I request to renew my DACA if I have a new crime in my record?

If you have been arrested or convicted of a new crime, it is important that you speak with an immigration expert before you submit a DACA renewal request. Due to changes in the government's immigration enforcement priorities as of January 2017, it is best to speak with an immigration expert before applying even in the cases where the incident happened before your last approval. Some DACA recipients with criminal issues have had their DACA renewal requests denied in cases that would have previously been approved.

### What if I lost my work permit, should I renew my DACA or apply to replace my work permit?

Whether you choose to submit a DACA renewal request, or a work permit replacement request is going to depend on when your DACA permit expires. If it expires in a few months or so, it makes sense to submit a renewal since you must pay the \$495 fee, and if approved you will get a work permit for two more years. If you file a Form I-765 for a work permit replacement, you will still need to pay the \$495 fee and will have to file a DACA renewal request in a few months and pay the fee again.

### How long are approvals for DACA requests taking?

There is no definite answer to how long it will take for USCIS to review your request. USCIS has stated that they will attempt to process DACA renewals within 120 days of receiving the request. Despite this policy, DACA requests have been reviewed and approved in less time (some as quickly as three weeks) or taken as long as six months or more. Requestors should receive a receipt notice and biometrics appointment within a few weeks of submitting their request.

To ensure your DACA request gets processed in a timely manner, please make sure to not miss your biometrics appointment and ensure you submit a complete request (no missing forms, no missing information, all forms signed in all of the required places, and completely answered Part 4 of the Form I-821D). Note that if your request has been pending for 105 days, you can submit an inquiry with USCIS by calling 1-800-375-5283 and giving them your receipt notice information.

### If my request is missing information, will USCIS reject my request or will they ask for more evidence?

Recently, USCIS has rejected DACA renewal requests for not being properly filed when information is missing from Form I-821D or Form I-765. Some USCIS service centers have previously issued a Request for More Evidence (RFE) for the type of missing information, allowing applicants to respond within a given period before USCIS continued their review. Some of the reasons USCIS rejected requests included missing an answer to a question in Part 4 of Form I-821D, missing date of birth, missing a signature, or missing a page

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of one of the immigration forms. USCIS stated that these requests were not properly filed, and they had a valid reason to reject.

Taking this into account, it is important that the request you submit is complete. This means all applicable boxes are checked, all information is provided, the exact fee is submitted, all signatures are included, and all immigration form pages are included.

### **Can I still travel on advance parole with my DACA?**

No. USCIS is no longer accepting requests for advance parole for DACA recipients. Recent court orders that restarted the DACA program only ordered USCIS to open the acceptance of DACA renewals, but they did not restart advance parole for DACA recipients.

There are cases where individuals are still traveling on advance parole, but all these permits were given prior to the September 5, 2017 announcement that rescinded the DACA program. Please note that even if you were granted advance parole prior to the announcement, there is always a risk to traveling outside the United States, and you need to speak with an immigration attorney before you make the decision to leave the country.

### **What can I do if I encounter immigration enforcement officers?**


Everyone, regardless of status, has certain rights under the United States Constitution. It does not matter if you are a citizen, legal permanent resident, or undocumented. This means you have a right to:

- not open your door to officers, unless they can show you a warrant signed by a judge
- remain silent and not have to answer any questions
- speak to an attorney, and
- not sign any document

It is important that you exercise your rights if you encounter immigration enforcement. Exercising these rights can make a big difference in your case. You can find a copy of a red card, outlining these rights, in different languages at <https://www.ilrc.org/red-cards>.

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<p>California Department of Justice Division of Law Enforcement</p> <p>Larry J. Wallace, Director</p>		<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i> <b>New and Existing State and Federal Laws Protecting Immigrant Victims of Crime</b></p>	<p><i>No.</i> DLE-2015-04</p>	<p><i>Contact for information:</i></p>	
	<p><i>Date:</i> October 28, 2015</p>	<p>Larry Wallace, Director, Division of Law Enforcement 916-319-8200</p>	

**TO:** All California State and Local Law Enforcement Agencies

This bulletin provides a summary of a new state law that requires agencies that investigate or prosecute criminal matters to assist crime victims without authorized immigration status in applying for a U nonimmigrant visa – a federal immigration visa set aside for victims of crime who have suffered substantial mental or physical abuse because of criminal activity, and who are willing to assist federal, state, and local law enforcement agencies or government officials in the investigation of that criminal activity. California’s Immigrant Victims of Crime Equity Act (Senate Bill 674), which takes effect on January 1, 2016, requires state and local law enforcement agencies, prosecutors, and other officials to certify the helpfulness of victims of qualifying crimes on a federal U Nonimmigrant Status Certification (Form I-918 Supplement B), also known as a “U visa certification.” **Unlike federal law, which provides certifying state and local agencies and officials with discretion in determining whether to complete the certification, California’s new law mandates that state and local agencies and officials submit certifications when certain conditions are met.** U.S. Citizenship and Immigration Services (USCIS) considers these certifications in determining whether to grant a qualifying immigrant a U nonimmigrant visa (U visa).

In addition to providing guidance on the new state law, this bulletin summarizes existing federal law governing U visas, answers relevant questions regarding U visa eligibility, and encourages state and local law enforcement agencies and officials to be vigilant in identifying and supporting immigrant crime victims who may be eligible for U visas. These visas are an important tool for encouraging the cooperation of witnesses, investigating, prosecuting, and convicting criminals, and increasing public safety.

### **Federal Law Governing U Visas for Certain Crime Victims**

The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000<sup>1</sup> is a federal law that, among other things, provides temporary immigration benefits to individuals without immigration status who are victims of specified qualifying crimes. Under the VTVPA, an immigrant victim of certain crimes can file a Petition for U Nonimmigrant Status (Form I-918) with USCIS. The U visa provides eligible victims with nonimmigrant status (including victims who are no longer in the United States) the opportunity to be temporarily present in the United States to help law enforcement in the investigation or prosecution of the criminal activity at issue. Under certain

<sup>1</sup> VTVPA, Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000).

circumstances, a person with a U visa may be able to adjust to lawful permanent resident status if USCIS determines that the individual qualifies for that status.

In order to file a Petition for U Nonimmigrant Status (Form I-918), an immigrant victim *must* provide a certification form (Form I-918 Supplement B) from a federal, state, or local law enforcement official certifying that he or she has knowledge of the following:

- The victim has been a victim of qualifying criminal activity;
- The victim possesses information about the qualifying criminal activity; and
- The victim has been, is being or is likely to be helpful to the investigation and/or prosecution of that qualifying criminal activity.

The petitioner is ineligible for a U visa without the certification, which the petitioner must file with his or her U visa petition. The VTVPA was designed both to encourage victims of crime to report crimes and assist in the investigations and prosecutions of those crimes regardless of their immigration status *and* to support law enforcement efforts in investigating and prosecuting crimes committed against immigrant victims.

#### **New California Law Regulating U Visa Certifications by Law Enforcement—Effective January 1, 2016**

Senate Bill 674 (De León)—the Immigrant Victims of Crime Equity Act (the Act) was signed by Governor Edmund G. Brown Jr. on October 9, 2015. The law adds a new provision to the California Penal Code. **This new law, Penal Code section 679.10, *mandates* that certain state and local agencies and officials complete U visa certifications, upon request, for immigrant crime victims who have been helpful, are being helpful, or are likely to be helpful in the detection, investigation, or prosecution of specified qualifying crimes.**

Significantly, under the Act:

- There is a rebuttable presumption that an immigrant victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.
- A certifying official may withdraw a previously granted certification only if the victim refuses to provide information and assistance when reasonably requested.
- In addition, a certifying official must fully complete and sign the U visa certification and include “specific details about the nature of the crime investigated or prosecuted and a detailed description about the victim’s helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.”

The Act also requires certifying entities to complete the certification **within 90 days** of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed **within 14 days** of the request.



The Act applies to the following California state and local entities and officials:

- State and local law enforcement agencies;
- Prosecutors;
- Judges;
- Agencies with criminal detection or investigative jurisdiction in their respective areas of expertise, including but not limited to child protective services, the Department of Fair Employment and Housing, and the Department of Industrial Relations; and
- Any other authority responsible for the detection or investigation or prosecution of a qualifying crime or criminal activity.

Additional provisions of the Act include:

- Certifying agencies are prohibited from disclosing the immigrant status of a victim or person requesting a U visa certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the certification.
- A current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the certification from a certifying official.
- Certifying agencies that receive certification requests must report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the particular agency, the number of certifications signed, and the number of certifications denied.

### **Questions and Answers Regarding Eligibility for U Visas**

#### ***1. Who is eligible for a U visa?***

Eligibility for U visas is governed by the VTVPA and determined by USCIS. Under those federal provisions, individuals without authorized immigrant status are eligible to apply for a U visa if they: (1) are victims of specified qualifying crimes, (2) have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity, (3) have specific knowledge and details of a qualifying crime committed within the United States, and (4) are currently assisting, have previously assisted, or are likely to be helpful in the detection, investigation, or prosecution of the qualifying crime.

Victims may apply for a U visa even if they are no longer in the United States. Individuals presently in removal proceedings or with final orders of removal can also apply. Moreover, a parent without authorized immigrant status can petition for their own U visa as an “indirect victim” of the qualifying crime, if their child is: (1) under 21 years of age, (2) the victim of a qualifying crime, and (3) incompetent or incapacitated such that she or he is unable to provide law enforcement with adequate assistance in the investigation or prosecution of the crime. (An immigrant parent can petition for a U visa regardless of his/her child’s citizenship status or whether his/her child died as the victim of murder or manslaughter.)

#### ***2. What is a qualifying crime?***

Under the relevant state and federal laws, qualifying crimes include rape, torture, human trafficking, incest, domestic violence, sexual assault, abusive sexual conduct, prostitution, sexual exploitation,

female genital mutilation, being held hostage, peonage, perjury, involuntary servitude, slavery, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, fraud in foreign labor contracting, stalking, and other related crimes which include any similar activity where the elements of the crime are substantially similar to the above specified offenses.

**The Immigrant Victims of Crime Equity Act, consistent with federal law, states that a qualifying crime includes the attempt, conspiracy, or solicitation to commit any of the specified and other related offenses.**

**3. *Is an arrest, prosecution, or conviction necessary to certify a U visa petition?***

California's Immigrant Victims of Crime Equity Act makes clear that a current investigation, the filing of charges, and a prosecution or conviction are not required to sign the law enforcement certification. Many situations exist where an immigrant victim reports a crime, but an arrest or prosecution cannot take place due to evidentiary or other circumstances. For example, the perpetrator may have fled the jurisdiction, cannot be identified, or has been deported by federal law enforcement officials. In addition, neither a plea agreement nor a dismissal of a criminal case affects a victim's eligibility. Furthermore, a law enforcement certification is valid regardless of whether the crime that is eventually prosecuted is different from the crime that was investigated, as long as the individual is a victim of a qualifying crime and meets the other requirements for U visa eligibility.

There is ***no statute of limitations*** that bars immigrant crime victims from applying for a U visa. Law enforcement can sign a certification at any time, and it can be submitted for a victim in an investigation or case that is already closed.

**4. *Will certifying a U visa petition automatically grant the victim an immigration benefit?***

Federal, state, and local law enforcement agencies cannot legally grant or guarantee an immigrant crime victim a U visa or any other type of immigration status by signing a U visa certification (Form I-918 Supplement B). Instead, USCIS conducts a full review of the victim's petition and a thorough background check of the petitioner before approving or denying the petition. USCIS will also make the determination as to whether the victim has met the "substantial physical or mental abuse" standard on a case-by-case basis during its adjudication of the petition. By signing a certification, the law enforcement official states: (1) under penalty of perjury, that the individual is or has been a victim of one of the qualifying crimes, and (2) the remaining information provided in the certification is true and correct to the best of the certifying official's knowledge. Without a completed U visa certification, victims will not be eligible for a U visa.

**Recommendations and Additional Resources for Law Enforcement**

Attorney General Kamala D. Harris is committed to seeking justice for every crime victim in California regardless of the victim's immigration status. Undocumented immigrants are often among the most vulnerable victims of crime across California. Fear of deportation is a significant deterrent to reporting crime for many undocumented immigrants. As such, the Attorney General encourages all agencies and officials subject to California's new law to immediately establish and implement a U visa certification policy and protocol that is consistent with California law and the guidance provided in this law enforcement bulletin.

The **USCIS web site** includes useful information regarding U visa eligibility, qualifying criminal activities, and applying for a U visa. See <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.

The **Form I-918 Supplement B Certification** can be found here: <http://www.uscis.gov/i-918>.

We look forward to working with you to ensure that California continues to set an example across the nation for building and preserving the relationship of trust between our peace officers and the communities we are sworn to serve, including immigrant communities. California's Immigrant Victims of Crime Equity Act is a positive step in strengthening that relationship.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry J. Wallace", with a long horizontal flourish extending to the right.

LARRY J. WALLACE, Director  
Division of Law Enforcement

For KAMALA D. HARRIS  
Attorney General