

# New Questions and Answers About DACA Now That Trump Is President

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**M**any of us are concerned about what could happen to the DACA program—and to DACA recipients—under President Trump’s administration.<sup>1</sup> During his campaign, Trump said that he intends to end the DACA program. But since the election, he has not said exactly if, when, or how he might do this. Nor do we know what his administration’s officials might do with the information that DACA applicants have submitted on their applications.

But we do know this: U.S. Citizenship and Immigration Services (USCIS) confirmed on January 23 that USCIS is still accepting and processing DACA applications, despite the possibility that the DACA program might be terminated.

Since DACA was created in 2012, anyone deciding whether or not to apply for it has had to weigh the benefits and risks of applying. When you provide information about yourself to immigration authorities—by submitting the DACA application—you are taking a risk. On the other hand, having DACA has brought many benefits to the people who have it, benefits that are highlighted in the recent report [New Study of DACA Beneficiaries Shows Positive Economic and Educational Outcomes](#).<sup>2</sup> Over 750,000 people have chosen to apply for and have received DACA. Many of them have, as a result, found better-paying jobs, received driver’s licenses, and enjoyed other benefits.

This FAQ provides information and recommendations that may help you decide what to do with respect to DACA now that Trump is the president. However, **the information in this FAQ is not legal advice**. Every person’s situation is different. To get legal advice about whether you should either apply for DACA for the first time or apply to renew your DACA, you should talk to a **qualified immigration lawyer** or a Board of Immigration Appeals (BIA)–**accredited representative**.

## Currently I do not have DACA, but I think I am eligible. Should I apply for it?

**If you do not currently have DACA** and are considering whether to apply for it for the first time, **we recommend** that you consult with an immigration attorney or a Board of Immigration Appeals–accredited representative before you apply.

Because no one is certain about what will happen with DACA, and because immigrant communities have legitimate fears about what will happen to them under the Trump

<sup>1</sup> DACA is the acronym for *Deferred Action for Childhood Arrivals*. More information about DACA is available at [www.nilc.org/daca/](http://www.nilc.org/daca/).

<sup>2</sup> [www.americanprogress.org/issues/immigration/news/2016/10/18/146290/new-study-of-daca-beneficiaries-shows-positive-economic-and-educational-outcomes/](http://www.americanprogress.org/issues/immigration/news/2016/10/18/146290/new-study-of-daca-beneficiaries-shows-positive-economic-and-educational-outcomes/).

This publication was previously titled *New Questions and Answers About DACA Now That Trump Is President-Elect*.

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administration, at this time we recommend not submitting a first-time application for DACA unless you have consulted with and are being represented by an attorney or accredited representative. This recommendation may change in the future, as we learn more about the Trump administration's plans for DACA.

Also consider this: If you apply for DACA today, it takes three months or more to process a DACA application. Three months from now the DACA program may have been terminated, and we don't know what USCIS will do about pending applications. It's possible not only that your application will not be approved, but that you may lose the \$495 application fee.<sup>3</sup>

On the other hand, there are scenarios under which submitting your application now may have positive results. For example, if the DACA program is not terminated before your application is approved, the following possibilities would still exist:

- The Trump administration may decide not to terminate the DACA program. You would then have work authorization and be protected from deportation.
- The DACA program may be terminated, but people who already have DACA may still have work authorization and be protected from deportation until their DACA and work permit expire.
- The Trump administration may decide to stop accepting first-time applications for DACA but continue to allow people who already have DACA to renew it.
- Legislation such as the [BRIDGE Act](#) could be enacted that would make people who have DACA automatically eligible for work authorization and protection from deportation.<sup>4</sup>

### I've decided to go ahead and apply for DACA. What else should I know before I submit my application?

If you decide to submit an application after you've consulted with an attorney or accredited representative, we recommend that you include in your application a completed form [G-28, Notice of Entry of Appearance as Attorney or Accredited Representative](#).<sup>5</sup> The G-28 must be completed by your attorney or accredited representative. It provides information about their eligibility to act on your behalf.

Also, make sure to use the latest edition of [Form I-765](#) (Application for Employment Authorization),<sup>6</sup> which is dated 01/17/17 (the date is in the form's bottom-left corner). Beginning February 21, 2017, USCIS will no longer accept applications submitted on any earlier version of the form. The processing of your DACA application may be delayed if you don't submit it on the form dated 01/17/17, because USCIS may send you a notice telling you that you must resubmit the application on the 01/17/17 version.

You can take certain additional steps that may get your application processed faster than it would be otherwise. For example, if you receive the notice of your biometrics appointment and don't want to wait until the appointment time, you could go to the Application Support Center that's listed on the notice and try to get a walk-in appointment. You could also try taking the steps described in NILC's "[Steps to Take if Your DACA Renewal Is Delayed](#)."<sup>7</sup>

<sup>3</sup> The application fee increased from \$465 to \$495 as of December 23, 2016.

<sup>4</sup> More information about the BRIDGE Act is available at [www.nilc.org/faq-bridge-act/](http://www.nilc.org/faq-bridge-act/).

<sup>5</sup> <https://www.uscis.gov/g-28>.

<sup>6</sup> <https://www.uscis.gov/i-765>.

<sup>7</sup> [www.nilc.org/steps-take-daca-renewal-delayed/](http://www.nilc.org/steps-take-daca-renewal-delayed/).

More information about submitting a first-time application for DACA is available at [www.nilc.org/faqdeferredactionyouth/](http://www.nilc.org/faqdeferredactionyouth/).

If you decide *not* to submit an application for DACA at this time, while you're waiting to see what the Trump administration decides about the DACA program you can gather any supporting documents that you will have to submit with your application if and when you apply. You can also fill out the application forms so they will be ready to file.

### I already have DACA and am deciding whether to apply to renew it. Should I submit my renewal application?

**If you *already have* DACA** and are considering whether to apply to *renew* it, immigration authorities already have the information on your original application, so **there is less risk in submitting the renewal application than in submitting a first-time application**. Because we don't know what might happen to DACA under the Trump administration, we recommend that you consult with an immigration attorney or a Board of Immigration Appeals–accredited representative before submitting a renewal application.

It usually takes USCIS about 120 days to process a DACA renewal application. However, some renewals have been processed in less time, some even within a month of the time they were submitted.

It's possible that the DACA program could be terminated before USCIS is able to review and approve your renewal application, and we don't know what USCIS will do about pending renewal applications. It's possible not only that your application will not be approved, but that you may lose the \$495 application fee.<sup>8</sup>

We don't yet know how the Trump administration, if it terminates the DACA program, will treat DACA and work permits that have already been issued and have not yet expired. It may decide either to revoke all DACA recipients' DACA and work permits immediately, or it may allow people to keep their DACA and work permits until they expire, but just not renew them.

There are scenarios under which submitting your renewal application now may have positive results. For example, if the DACA program is not terminated before your renewal application is approved, the following possibilities would still exist:

- The Trump administration may decide not to terminate the DACA program. You would then have work authorization and be protected from deportation for an additional two years.
- The DACA program may be terminated, but people who already have DACA may still have work authorization and be protected from deportation until their DACA and work permit expire. Under this possibility, you would have work authorization and be protected from deportation for an additional two years.
- The Trump administration may decide to stop accepting first-time applications for DACA but continue to allow people who already have DACA to renew it. Under this possibility, it *may* be that only people who have a valid, unexpired work permit under DACA will be eligible to apply to renew it.

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<sup>8</sup> The application fee increased from \$465 to \$495 as of December 23, 2016.

- Legislation such as the [BRIDGE Act](#) could be enacted that would make people who have DACA automatically eligible for work authorization and protection from deportation.<sup>9</sup>

### I've decided to go ahead and apply to renew my DACA. What else should I know before I submit my renewal application?

If you decide to submit a renewal application after you've consulted with an attorney or accredited representative, we recommend that you include in your application a completed form [G-28, Notice of Entry of Appearance as Attorney or Accredited Representative](#).<sup>10</sup> The G-28 must be completed by your attorney or accredited representative. It provides information about their eligibility to act on your behalf.

You may apply to renew your DACA at any time before its expiration date, even if it is not set to expire until late 2017.

Make sure to use the latest edition of [Form I-765](#) (Application for Employment Authorization),<sup>11</sup> which is dated 01/17/17 (the date is in the form's bottom-left corner). Beginning February 21, 2017, USCIS will no longer accept applications submitted on any earlier version of the form. The processing of your DACA application may be delayed if you don't submit it on the form dated 01/17/17, because USCIS may send you a notice telling you that you must resubmit the application on the 01/17/17 version.

You can take certain additional steps that may get your application processed faster than it would be otherwise. For example, if you receive the notice of your biometrics appointment and don't want to wait until the appointment time, you could go to the Application Support Center that's listed on the notice and try to get a walk-in appointment. You could also try taking the steps described in NILC's [Steps to Take if Your DACA Renewal Is Delayed](#).<sup>12</sup>

More information about submitting a DACA renewal application is available at [www.nilc.org/dacarenewalprocess/](http://www.nilc.org/dacarenewalprocess/).

### I have DACA and was planning to take a trip outside the States. Should I still go?

If you have DACA and want to continue living in the U.S., you should never travel abroad unless you have applied for and received *advance parole* from USCIS. Advance parole is permission from USCIS to return to the U.S. after traveling abroad.

However, because we are not sure about what the Trump administration will do with respect to DACA, our general recommendation is that people with DACA *not* travel abroad at this time. If you decide that you must travel outside the U.S., and if you receive advance parole, we recommend that you keep your trip as short as possible. We also recommend that you arrange to have your BIA-accredited representative or attorney standing by, available by phone, when you return to the U.S. so they can provide real-time advice if the immigration officer tries to prevent you from entering. Even if you've received advance parole, people with DACA may find it harder under the present administration to be admitted into the U.S. after they've traveled abroad, nor is it certain that you will be allowed back into the U.S. if you leave.

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<sup>9</sup> More information about the BRIDGE Act is available at [www.nilc.org/faq-bridge-act/](http://www.nilc.org/faq-bridge-act/).

<sup>10</sup> <https://www.uscis.gov/g-28>.

<sup>11</sup> <https://www.uscis.gov/i-765>.

<sup>12</sup> [www.nilc.org/steps-take-daca-renewal-delayed/](http://www.nilc.org/steps-take-daca-renewal-delayed/).

## What will happen to the information on DACA applications?

Currently, USCIS's policy is that it does not share information about a DACA applicant or the applicant's family members with U.S. Immigration and Customs Enforcement (ICE) for immigration enforcement purposes unless there are serious criminal, fraud, or national security issues with the case.<sup>13</sup> This policy is based on a 2011 USCIS memo which states that USCIS will refer to ICE only cases that raise fraud or "egregious public safety" concerns (such as that the applicant has a serious criminal conviction).<sup>14</sup> Changing these policies would require that USCIS change its memo and guidance.

## If I have DACA, will I be deported if the DACA program is terminated?

People with DACA would not necessarily be automatically at greater risk of being deported than other undocumented immigrants if the DACA program is terminated.

The U.S. Department of Homeland Security (DHS) considers people who, for example, have felony criminal convictions or recent deportation orders as being "enforcement priorities."<sup>15</sup> DHS assigns higher priority to detaining and deporting people who it considers enforcement priorities. People with DACA are considered "low priorities" for deportation, based on how long they've lived in the U.S., their ties to the U.S., and their not having committed serious crimes. Keep in mind, though, that the Trump administration may change these priorities.

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Remember that **DACA was an organizing victory won by undocumented immigrant youth**. It took a lot of sacrifice and resilience from a lot of young people for executive action to be announced and implemented, and it will take more from all of us to continue defending it. **Together we can and will fight to keep DACA, and to prevent DACA recipients from being deported.**

Visit [www.nilc.org/daca/](http://www.nilc.org/daca/) and our blog, [The Torch](#),<sup>16</sup> for more information and updates about DACA. We also regularly post updates on [Facebook](#) and [Twitter](#).<sup>17</sup>

Remember, **the information provided in this FAQ is not legal advice**. Every person's situation is different. To get legal advice about whether you should either apply for DACA for the first time or apply to renew your DACA, you should talk to a **qualified immigration lawyer** or a Board of Immigration Appeals (BIA)–**accredited representative**.

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<sup>13</sup> See USCIS's DACA FAQ, answers 19 and 20, [www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions](http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions).

<sup>14</sup> See USCIS's memorandum *Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens*, Nov. 7, 2011, [www.uscis.gov/NTA](http://www.uscis.gov/NTA).

<sup>15</sup> See DHS's memorandum *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, Nov. 20, 2014, [www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf).

<sup>16</sup> [www.nilc.org/news/the-torch/](http://www.nilc.org/news/the-torch/).

<sup>17</sup> Facebook: <https://www.facebook.com/NationalImmigrationLawCenter>;

Twitter: [https://twitter.com/NILC\\_org](https://twitter.com/NILC_org).