

CHAPTER 1

INTRODUCTION

This chapter includes:

§ 1.1	Introduction	1
§ 1.2	Background	2
§ 1.3	Efforts of the Trump Administration to End DACA.....	3
§ 1.4	Current Status of the DACA Program.....	5
§ 1.5	About This Manual.....	6

§ 1.1 Introduction

When President Obama first announced the creation of the Deferred Action for Childhood Arrivals (DACA) program through Executive Action on June 15, 2012, it was one of the most exciting moments in recent history for immigrants. It had been over 25 years since the Immigration Reform and Control Act of 1986 (IRCA) provided the opportunity to three million undocumented immigrants to obtain lawful permanent residence. Subsequent federal legislation had failed to deliver a new comprehensive immigration or legalization program.

The DACA program benefits undocumented immigrants who entered the country before the age of 16 and graduated from a U.S. high school, are currently in a qualifying educational program, or served in the U.S. military. Individuals granted DACA are protected from removal and may obtain permission to work for two years, with the possibility of renewal.

Although DACA falls short of providing lawful permanent residence status, an estimated 1.2 million undocumented individuals were eligible for DACA when the program was announced, and over 700,000 immigrants have been granted DACA since the program's inception.¹ As of this manual's writing, Migration Policy Institute estimates that 1,331,000 could be eligible for DACA.²

The Executive Action that created DACA represented a seminal moment in the history of immigrant rights in the United States because it was an achievement of the organizing efforts and leadership of directly impacted immigrant youth. Increased detentions, deportations, and border enforcement funding had been the order of the day and calls for visa reform and a path to citizenship for the estimated 11 million undocumented immigrants in the country had been blocked. With mounting criticism from the immigrant community, supporters calling for immigration reform, and the 2012 general election approaching, on June 15, 2012, President

¹ For data sets on DACA adjudications by the U.S. Citizenship and Immigration Service, visit <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-821d-deferred-action-childhood-arrivals>.

² See Migration Policy Institute, "Deferred Action for Children Arrivals (DACA) Data Tools," available at <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles>, last visited on January 6, 2021.

Obama announced DACA. His announcement came after a series of protests by impacted youth, including a weeklong sit-in at Obama’s Denver, Colorado campaign offices in 2012. The persistence, dedication, organizing skills, and advocacy of the so-called Dreamers convinced the Obama Administration to do the right thing through executive authority.

§ 1.2 Background

In 2001, the DREAM Act (Development, Relief, and Education for Alien Minors) was first introduced in Congress by a bipartisan group of legislators. Various versions of the legislation would have provided lawful permanent residence and eventually U.S. citizenship to certain undocumented individuals (up to age 30 or 35) of good moral character, who graduated from U.S. high schools, arrived in the United States as minors, and lived in the country continuously for at least five years prior to the bill’s enactment. Beneficiaries would have also needed to complete two years in the military or two years at a four-year institution of higher learning. (The military option replaced community service contained in early versions of the DREAM Act.) Many of these undocumented youths called themselves “Dreamers.”

Following the first introduction of the DREAM Act, and subsequent reintroductions, Dreamers and their allies faced a battle not only with those who were opposed to any “amnesty” for undocumented immigrants, but with some supporters who wanted comprehensive immigration reform that would cover all undocumented immigrants, not just the young. Some Democrats opposed the DREAM Act’s piecemeal approach to reform, worried that they would only get one shot at reform and that moving forward on a limited piece like a DREAM Act would be at the exclusion of other equally worthy pieces of legislation. However, by the fall of 2010, sentiment solidified among most supporters, and the DREAM Act came to the Senate floor with support from both parties and the White House. However, in September 2010, Senate Republicans blocked action on the DREAM Act by conducting a filibuster of the defense authorization bill to which the legislation had been attached.

After the November 2010 elections, the prospects for comprehensive immigration reform faded. Democrats lost their majority in the House of Representatives in the next Congress. So, during the lame duck, post-election Congressional session, the House passed the DREAM Act with a 216-198 vote on December 8, 2010. The DREAM Act became a top priority of then-Senate Majority Leader Harry Reid, who won a tough re-election fight that November with the help of Nevada’s large Latinx community, which strongly supported the DREAM Act. The bill garnered a majority of Senate votes, 55-41, but failed to advance because 60 votes were required to overcome a filibuster. Republican Senators John McCain, Orrin Hatch, and Bob Bennett, all original sponsors of the DREAM Act, voted against it in 2010.

Four months later, after the new Congress assembled and Republicans took control of the House of Representatives; twenty-two senators sent a letter to President Obama asking him to act administratively to grant deferred action for undocumented immigrant youth who would have qualified for the bill. Led by Senators Durbin and Reid, they reminded the President that “the exercise of prosecutorial discretion in light of law enforcement priorities and limited resources has a long history in this nation and is fully consistent with our strong interest in the rule of law.... Granting deferred action to DREAM Act students, who are not an enforcement priority for

[Department of Homeland Security] DHS, helps to conserve limited enforcement resources.”³ Congressman Gutierrez also argued that the President had the power to stop deporting immigrants with “deep roots” in the United States.⁴

President Obama’s June 15, 2012 DACA announcement was a culmination of the failure of the DREAM Act to pass, the congressional pressure of DREAM Act supporters to do something administratively, and especially the lobbying and advocacy efforts of Dreamers themselves.

PRACTICE TIP: The term “Dreamers” is often used to describe undocumented immigrants who were brought to the United States as children, and/or in reference to the potential beneficiaries of the DREAM Act.

The term “Dreamer” has been used less frequently in recent years by advocates and the immigrant community for multiple reasons. Some individuals believe the term “Dreamer” promotes a harmful dichotomy between the “good” immigrant—such as the outstanding valedictorian undocumented student—versus the “bad” immigrant—such as the immigrant who was not seen as exceptional due to their lack of economic achievement or economic contributions. Others felt it led to a contrast between Dreamers and their parents who were portrayed as culpable for their children being in the United States without authorization. Furthermore, in recent years, advocacy led by undocumented youth has grown to align with the larger immigrant community to demand a permanent solution that would encompass more than those who would be eligible for the DREAM Act.

Nonetheless, as of this manual’s writing, there are still many who use the term “Dreamer” to refer to undocumented youth, undocumented immigrants who came to the United States as children, and/or DACA-eligible individuals—including those who self-identify as Dreamers and fall within those categories. Therefore, at times we continue to use the term throughout this manual as well.

§ 1.3 Efforts of the Trump Administration to End DACA

On September 5, 2017, President Trump fulfilled a campaign promise and attempted to terminate the DACA program by way of an announcement from his then-Attorney General Jeff Sessions.⁵ At that point, no new initial, or first-time, applications for DACA were accepted, and DACA recipients were given until October 7, 2017 to file any DACA renewal requests for DACA cases that were set to expire before March 5, 2018.⁶ Very shortly thereafter, multiple entities challenged the rescission of DACA in courts throughout the country.

³ See <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=cc76d912-77db-45ca-99a9-624716d9299c>.

⁴ *Illinois Rep. Luis Gutierrez arrested during DREAM Act protest*, CHICAGO SUN-TIMES, July 27, 2011.

⁵ U.S. Department of Homeland Security, *Rescission of the June 15, 2012 Memorandum Entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,”* September 5, 2017 available at <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

⁶ *Id.*

Immigrant Legal Resource Center
January 2021

On January 9, 2018, a federal judge in the U.S. District Court for the Northern District of California ordered USCIS to resume accepting DACA renewals nationwide.⁷ The order did not require USCIS to accept *initial* DACA applications or DACA-related advance parole requests and remained unavailable. On January 13, 2018, USCIS began accepting DACA renewal applications again.

Numerous other lawsuits followed, but none initially resulted in the full restoration of the DACA program. DACA eventually made its way to the U.S. Supreme Court and was argued before the Justices on November 12, 2019.

On June 18, 2020, the Supreme Court ruled against the Trump administration's attempt to end the DACA program, ruling that the rescission was in violation of the Administrative Procedures Act.⁸ The Court's decision was based on the procedural requirements of the rescission and not on the legality of the DACA program. It found the termination "arbitrary and capricious" because it failed to consider important aspects of the DACA program, including that DACA recipients, educational institutions, employers, and others have come to rely on the DACA program. Accordingly, the Court upheld a lower court decision that vacated the September 5, 2017 memorandum terminating DACA, thereby restoring DACA to its original 2012 version.⁹ This meant that USCIS should have begun accepting both initial and renewal DACA requests, along with applications for advance parole from DACA recipients.

The Supreme Court did not address DACA's legality, which was not a question before the Court. Nor did the Court require DHS to maintain DACA if it terminated the program in a lawful way.

After the Supreme Court decision, DHS did not immediately provide any guidance about how they would implement the decision and restart processing initial DACA applications and advance parole applications.

On July 28, 2020, DHS released a new memorandum titled, "Reconsideration of the June 15, 2012 Memorandum Entitled 'Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children'" ("Wolf Memo") to consider "anew the DACA policy" and assess "whether the DACA policy should be maintained, rescinded, or modified."¹⁰ In summary, the Wolf Memo stated that while DHS was reviewing the DACA policy, USCIS would reject all initial DACA requests; reject all advance parole applications from DACA recipients except where there were "exceptional circumstances;" and shorten the DACA renewal and work authorization period from two

⁷ *Regents of the University of California, et al. v. Department of Homeland Security, et al.*, 279 F. Supp. 3d 1011 (N.D. Cal. 2018).

⁸ *Dep't of Homeland Security v. Regents of Univ. of Cal.*, 591 U.S. ____ (2020) (slip op., at 26).

⁹ *Id.* At 29 n.7. (noting that the Court has affirmed an order of the NAACP case below, which vacated the DACA termination).

¹⁰ U.S. Department of Homeland Security, *Reconsideration of the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,"* July 28, 2020, available at https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf.

years to one year. On August 21, 2020 USCIS released new implementation guidance to its personnel in response to the Wolf Memo.¹¹

§ 1.4 Current Status of the DACA Program¹²

As of this manual's writing (January 2021), the DACA program has been restored in full, and USCIS is reported to be accepting initial applications, renewal applications, and DACA-related advance parole requests, and is granting DACA employment authorization for two-year periods of time.

On December 4, 2020, the Eastern District of New York issued an order vacating the Wolf Memo. The court had previously concluded, in an opinion issued on November 14, 2020, that Chad Wolf was not lawfully serving as the Secretary of Homeland Security and thus had no lawful authority to issue the Wolf Memo. By vacating the Wolf Memo, the court's December 4, 2020 order restored DACA to its pre-September 5, 2017 status, the date the Trump administration attempted to terminate DACA.¹³

The court's November 14, 2020 order also certified a nationwide class. The class includes all persons who are or will be prima facie eligible for DACA under the terms of the 2012 memorandum that implemented DACA for the first time under the Obama administration. The class excludes the small number of people who brought their own federal lawsuit challenging the Wolf Memo. The court also certified a nationwide subclass consisting of individuals who had applications pending at USCIS between June 30, 2020 and July 28, 2020 that had been adjudicated according to the Wolf Memo. Individuals do not need to take any additional steps to be part of the class or subclass. Class members and their immigration attorneys can find additional information at <http://www.dacaclassaction.org/>.

The December 4, 2020 order requires DHS to accept applications from first-time DACA applicants as well as DACA renewals, that renewals must now receive two-year grants of DACA and work authorization, and that DHS must accept requests for advance parole for DACA recipients under the pre-September 2017 standards. Under the pre-September 2017 standards, advance parole is available for individuals who demonstrate that their need to travel is for "humanitarian, education, or employment" purposes. Applicants will also not be barred from renewing their DACA before the 150-day expiration mark, as stated in the Wolf Memo.

¹¹ U.S. Citizenship and Immigration Services, *Implementing Acting Secretary Chad Wolf's July 28, 2020 Memorandum, "Reconsideration of the June 15, 2012 Memorandum 'Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,'" August 21, 2020, available at <https://www.uscis.gov/sites/default/files/document/policy-alerts/DACA%20implementation%20memo%20v2%208.21.20%20final.pdf>.*

¹² For more detail about the current state of litigation impacting DACA, see National Immigration Law Center (NILC), *Litigation Related to Deferred Action for Childhood Arrivals* available at <https://www.nilc.org/issues/daca/litigation-related-to-the-daca-program/> and Immigrant Legal Resource Center (ILRC), *DACA Practice update December 2020* available at <https://www.ilrc.org/daca-practice-update-december-2020>.

¹³ *Batalla Vidal v. Wolf*, No. 16 Civ. 4756, slip op. at 2 (E.D.N.Y. Dec. 4, 2020), ECF 354.

Immigrant Legal Resource Center
January 2021

As of this manual's writing, the DACA program has been restored in full, there are pending issues that may impact the future of the program.

A case brought by Texas and other states challenging the legality of DACA in *Texas v. United States* continues to pose a threat to the status of the DACA program. This case is different and separate from the cases that challenged the termination of the DACA program in that its core issue is the legality of the program itself. This case is being reviewed by the Southern District of Texas which had a hearing on December 22, 2020 and as of this manual's writing, we are still awaiting a decision. Advocates should make sure to visit the ILRC's website at <https://www.ilrc.org/daca>, NILC's website at <https://www.nilc.org/issues/daca/>, and USCIS's website <https://www.uscis.gov/> for updates on the program and practice tips. Advocates can also post questions and information and monitor DACA cases in the field by joining the DACA Experts listserv via <https://www.ilrc.org/legal-listservs>.

§ 1.5 About This Manual

PRACTICE TIP: For purposes of this manual, we use the terms DACA “requests” and “applications” interchangeably; USCIS refers to the process as “requests.” We call the individuals requesting DACA “applicants,” while USCIS calls them “requestors.”

This manual contains 9 chapters and an extensive appendix. This first chapter is an introduction to the manual. The second chapter contains a thorough review of the DACA eligibility requirements. The third chapter discusses the criminal bars to DACA. The fourth chapter reviews some of the most efficient and effective ways of working with DACA-eligible clients. The fifth chapter contains extensive information on how to document a winning DACA application. The sixth chapter provides a detailed analysis of the DACA request process and information on how to complete the DACA forms. The seventh chapter covers the important issue of how to make a DACA request for someone who has removal issues. The eighth chapter reviews DACA requests for evidence, decisions, appeals and renewals. The ninth chapter discusses how to obtain benefits associated with DACA, such as drivers' licenses, social security numbers, and traveling on advance parole. Finally, we have included an extensive appendix to this manual, which includes dozens of different documents that will be useful to practitioners who assist DACA applicants.

PRACTICE TIP: In addition to this manual, we urge everyone to visit the ILRC's DACA page at <http://www.ilrc.org/daca> for DACA resources, practice advisories, community materials, toolkits, webinars, and more. We also manage a listserv for those who regularly assist others with DACA applications. DACA Experts is a listserv for immigration legal services providers to discuss DACA issues and share resources. You can join our DACA Experts listserv to share questions, practice tips with other practitioners around the country, and receive updates on DACA. To join the listserv, first send an email to main+subscribe@ILRC.groups.io and reply to the notification to join our listserv system; wait until you are approved, then email a request to DACAExperts+subscribe@ILRC.groups.io to join the DACA Experts list. Please check your spam folders if you don't see the follow-up notifications.