



# CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

## Latest Developments on DACA and TPS

Dec. 17, 2020

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## Speakers

- **Jill Marie Bussey**, Director of Advocacy, CLINIC
- **Minyoung Ohm**, Section Manager, Capacity Building, CLINIC
- **Ilissa Mira**, Staff Attorney, Training and Legal Support, CLINIC
- **Jen Riddle**, Staff Attorney, Training and Legal Support, CLINIC
- **Karen Tumlin**, Founder and Director, Justice Action Center

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## Today's Agenda

- **DACA**
  - *Batalla Vidal* court order and DHS response
  - Challenges moving forward
  - Eligibility for initial DACA and advance parole
  - Service delivery and program management considerations
  - Case assistance and advocacy
- **TPS**
  - Background on TPS termination litigation
  - Automatic TPS and work authorization extension
  - Challenges in the field
  - Advocacy developments

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### *Batalla Vidal Order*

- Dec. 4, 2020 court order re-opening DACA program on its terms prior to the first Trump administration termination attempt, on Sept. 5, 2017.
- First-time initial applications being accepted
- Advance Parole under 2012 standards
- Renewals of DACA and EADs for 2 years
- Applies to nationwide class

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### DHS Response

- So far, DHS is complying with the Court order
- Please note any issues with compliance for us via [dacaclassaction.org](http://dacaclassaction.org) or via email
- Individualized notice to various sets of class members by Jan. 8, 2021
- New 2-year EADs at no cost to DACA recipients
- Data report to court due Jan. 4, 2021

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## Challenges Moving Forward

- Information on any compliance issues will be key to have and share with the court.
- DOJ has until Feb. 2, 2021 to appeal and could seek a stay.
- Hearing before court in S.D. Texas in *Texas v. US* case on Dec. 22, 2020. MALDEF are intervenors in this case, follow them for updates.

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## DACA Guidance & Authorities

- 2012 Napolitano Memo creating DACA
- Archived USCIS DACA FAQs
- DACA SOP (2013)
- Form Instructions for I-821D, I-765 and I-765WS
- Court orders from *Batalla Vidal* and posted USCIS response
- 2018 and 2011 NTA Policy Memos

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## DACA Eligibility Requirements

- Must be at least 15 years or older to request DACA
  - unless you are currently in removal proceedings or have a final removal or voluntary departure order
- Under 31 years old on June 15, 2012
- Came to U.S. prior to age 16
- Continuous residence in U.S. since June 15, 2007
- No lawful status and physical presence in the U.S. on June 15, 2012 and on date of application

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## DACA Eligibility Requirements

- Currently in school; obtained a H.S. diploma or GED; or honorably discharged from the U.S. armed forces
- Not convicted of a felony; a significant misdemeanor; or 3 or more non-significant misdemeanors; or otherwise pose a threat to national security or public safety
  - USCIS has discretion to grant DACA under “exceptional circumstances”

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## How would you advise Jackie?

Jackie came to the U.S. in 2005 when she was 10 years old. She had not met the DACA education requirement before the program was terminated in 2017. She now wants to apply for DACA for the first time but is nervous, especially since she lives with undocumented parents. She wants to know:

- Should she file now or wait, maybe until after Biden is in office?
- Can she travel to visit family abroad?

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## Advance Parole

- Must be granted DACA prior to applying
- Must be for approved purposes:
  - Humanitarian
  - Educational
  - Employment
- May request expedite or emergency AP
- DACA recipient should return before AP and DACA grant expire

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## Other Practice Tips

- Counsel clients about risks and benefits before filing
- File initial applications without delay
- Screen for other relief, including relief from removal
- Consider how you will help clients gather evidence remotely
- Carefully complete forms to avoid RFEs

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## Program Management Tips on DACA Service Delivery

- Consider remote legal service delivery and virtual workshops  
[https://www.newamericascampaign.org/wp-content/uploads/2020/10/Comprehensive-Guide-to-Remote-Citizenship-Services\\_Final.pdf](https://www.newamericascampaign.org/wp-content/uploads/2020/10/Comprehensive-Guide-to-Remote-Citizenship-Services_Final.pdf)
- Use your case management database to its fullest capacity in reporting, prioritizing, and organizing
- Track consultations that don't lead to applications
- Make sure that all your DACA applicants, past clients, update their current addresses with USCIS

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## Other Program Management Considerations

- Have a realistic assessment of how many cases you can take and manage client expectations
- Build capacity by getting accreditation for your volunteers and staff - <https://cliniclegal.org/toolkits/recognition-accreditation>
- Update fee schedules and policies, and standardize training manuals for remote training and supervision - <https://cliniclegal.org/toolkits/case-management>
- Advocate for your agency's immigration program needs to your leadership and funders

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## DACA Case Assistance

What do you do if you need help with your client's DACA application?

- For CLINIC affiliates
  - Try to resolve case issue with USCIS (keep record)
  - Email [Advocacy@cliniclegal.org](mailto:Advocacy@cliniclegal.org)
- For non-CLINIC affiliates
  - Ombudsman - <https://www.dhs.gov/case-assistance>
  - Congressional case assistance

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## DACA Advocacy

- Administrative advocacy
  - USCIS must implement the DACA program fairly, consistently, and efficiently
  - Applicants and legal representatives should be able to access USCIS to seek assistance with cases
- Legislative advocacy
  - DACA was never the end goal; Permanent protection is urgently needed.

<https://justiceforimmigrants.org/what-we-are-working-on/immigration/daca-resource-page/>

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## DACA Resources

- CLINIC's DACA Resources
 

<https://cliniclegal.org/issues/deferred-action-childhood-arrivals-daca>

  - Practice advisory on filing DACA applications
  - Screening Tools
  - Evidence Checklist
  - Program Management -<https://cliniclegal.org/resources/humanitarian-relief/deferred-action-childhood-arrivals/program-management-tips-daca>
- DACA Class Action Lawsuit
 

<https://www.nilc.org/issues/daca/daca-class-action-lawsuit/>
- MALDEF updates on *Texas v. U.S. case*

<https://www.maldef.org/court-cases/immigrants-rights/>

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### TPS Terminations

Country	Original TPS Designation Date	Estimated TPS Beneficiaries	Current TPS Expiration Date
Sudan	Nov. 4, 1997	1,040	Oct. 4, 2021*
Nicaragua	Jan. 5, 1999	2,550	Oct. 4, 2021*
Nepal	June 24, 2015	8,950	Oct. 4, 2021*
Haiti	Jan. 21, 2010	46,000	Oct. 4, 2021*
El Salvador	Mar. 9, 2001	195,000	Oct. 4, 2021*
Honduras	Jan. 5, 1999	57,000	Oct. 4, 2021*

\* TPS termination temporarily halted under *Ramos*, *Bhattarai* and *Saget* cases

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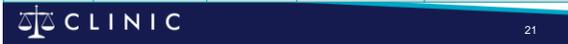
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### Lawsuits Challenging Terminations

Lawsuit Name	U.S. District Court	Impacted Country/ies	Lower Court Order	Status on Appeal
<i>Ramos v. Wolf</i>	Northern District of California	El Salvador Haiti Nicaragua Sudan	Preliminary injunction issued 10/4/18	9 <sup>th</sup> Circuit reversed injunction 9/14/20; Petition for rehearing <i>en banc</i> pending and gov't response due Dec. 30.
<i>Bhattarai v. Wolf</i>	Northern District of California	Honduras Nepal	Linked to <i>Ramos</i> on 3/12/19 and stayed pending resolution of <i>Ramos</i> appeal	See above
<i>Saget v. Trump</i>	Eastern District of New York	Haiti	Preliminary injunction granted 4/11/19	Appeal of injunction pending with 2 <sup>nd</sup> Circuit.




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### Dec. 9, 2020 Federal Register Notice

- Automatically extends I-797 approval notices, I-94s, and EADs through Oct. 4, 2021
- Must have properly re-registered during a prior registration period (or have pending re-registration app.) and have (a)(12) or (c)(19) EAD with expiration date of:

7/22/17	11/2/17	1/5/18	1/22/18	3/9/18	6/24/18
7/5/18	11/2/18	1/5/19	4/2/19	6/24/19	7/22/19
9/9/19	1/2/20	1/5/20	3/24/20	1/4/21	

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### Dec. 9, 2020 Federal Register Notice

- Eligible TPS holders do not need to pay a fee or file any application
- May still file late re-registration application if can demonstrate “good cause”
  - <https://cliniclegal.org/resources/humanitarian-relief/faqs-late-re-registration-tps>
- Auto-extension does not apply to TPS holders whose status has been withdrawn or denied

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### Timeline for Terminations

- Once all appeals exhausted (and assuming the government prevails), the following wind-down periods apply:
  - Honduras, Nepal, Nicaragua, Sudan: 120 days from issuance of appellate mandate to *Ramos* district court
  - Haiti: 120 days from issuance of the later of the two appellate mandates (*Ramos* and *Saget*)
  - El Salvador: 365 days from issuance of appellate mandate to *Ramos* district court

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## Challenges in the Field

- TPS holders experience a host of challenges
  - EAD applications
  - Employment verification and discrimination
  - Obtaining/renewing drivers licenses
  - Accessing higher education
  - Access to bank accounts, extending leases on housing

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## TPS Advocacy

- CLINIC has defended TPS throughout the Trump administration
- CLINIC and the TPS Advocacy Working Group's recommendations to the Biden-Harris administration
  - <https://cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/tps-1>
- Pathway to citizenship

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## TPS Resources

- Federal Register Notice:
  - <https://www.federalregister.gov/documents/2020/12/09/2020-27154/continuation-of-documentation-for-beneficiaries-of-temporary-protected-status-designations-for-el>
- USCIS website:
  - <https://www.uscis.gov/humanitarian/temporary-protected-status>
- CLINIC's resources:
  - <https://cliniclegal.org/issues/temporary-protected-status-tps-and-deferred-enforced-departure-ded>
- National TPS Alliance:
  - <https://www.nationaltpsalliance.org/>

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