



CATHOLIC LEGAL
IMMIGRATION
NETWORK, INC.

Nuts and Bolts of DACA

Filings in 2021

Jan. 29, 2021

Speakers

- **Ilissa Mira**, Staff Attorney, Training and Legal Support, CLINIC
- **Jen Riddle**, Staff Attorney, Training and Legal Support, CLINIC



Today's Agenda

- Latest developments: policy and litigation
- DACA eligibility and gathering evidence
- Filing DACA applications
- Advance parole travel





Batalla Vidal Order

- Dec. 4, 2020 court order re-opened DACA program on its original (2012) terms
- First-time initial applications being accepted
- Advance parole under 2012 standards
- Renewals of DACA and EADs for 2 years
- Applies to nationwide class



DHS Response

- Submitted data report to court on Jan. 4, 2021
- Sent individualized notices to various class members by Jan. 8, 2021
- Will issue new 2-year EADs to 68,000 DACA recipients at least 30 days before current EAD expires
- Class members should report any compliance issues via dacaclassaction.org
- Jan. 20, 2021 Biden memo orders DHS and AG to “preserve and fortify DACA”



Unknowns Moving Forward

- DOJ has until Feb. 2, 2021 to appeal *Batalla Vidal* order and could seek a stay.
- Following Dec. 22, 2020 summary judgement hearing in *Texas v. US*, court in S.D. Texas could issue decision anytime. Follow MALDEF for updates.
- Future actions by Biden administration
- Possible legislative solution from Congress

DACA Guidance/Authorities

- 2012 Napolitano Memo creating DACA -
- <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>
- USCIS DACA FAQs -
- <https://www.uscis.gov/humanitarian/humanitarian-parole/frequently-asked-questions>
- DACA SOP (2013) - https://drive.google.com/file/d/0B_6gbFPjVDoxNE0yV0pRV0JRazA/edit

DACA Guidance/Authorities (cont.)

- Form Instructions for I-821D, I-765, I-765WS - <https://www.uscis.gov/i-821d>
- Court orders from *Batalla Vidal* and posted USCIS response - <https://www.dhs.gov/publication/batalla-vidal-et-al-v-wolf-et-al-and-state-new-york-et-al-v-trump-et-al>
- 2011 USCIS NTA Policy Memo - <https://www.uscis.gov/sites/default/files/document/memos/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf>



DACA Eligibility Requirements

- Under 31 as of June 15, 2012;
- Entered U.S. before age 16;
- Continuous residence since June 15, 2007;
- Physically present on June 15, 2012 & time of request;
- Graduated from high school; currently enrolled in school; or obtained a GED; or are honorably discharged from the U.S. Coast Guard or Armed Forces;
- No lawful status as of June 15, 2012;
- Not convicted of a felony, significant misdemeanor, or 3 or more other misdemeanors



Age

- 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



Residence, Physical Presence, & Immigration Status

- Physically present on 6/15/2012 and at time of application
- No lawful immigration status on 6/15/2012 and at time of application
- *Continuously resided* in U.S. from 6/15/2007 to present
 - Some absences acceptable if:
 - On or after 6/15/2007 but before 8/15/2012 AND
 - “Brief, casual, and innocent” and not in response to Order of Removal or Voluntary Departure

No lawful status on 6/15/12?

- Isaac, who entered with a BCC on June 1, 2012 and was not issued an I-94 at the time of admission
- Emilia, who entered on an F-1 visa in 2005 but stopped attending classes and started working full time in 2006.
- Min, who overstayed a tourist visas but had an adjustment of status application pending on June 15, 2012.

Is Deni Eligible for DACA?

- Deni first came to the U.S. EWI in 2001 when she was 11 years old. In 2004 she left the country with her mother. She re-entered the U.S. in May 2007, when she was 17.
- Deni’s father lives in Mexico. In 2009 he became very ill and Deni went to visit him and take care of him for five months. She re-entered as a passenger in a car that was waived through at the border.
- What if she had visited her father for two weeks in 2014?

Education Requirement

- High school diploma or GED
- “Currently in school” includes:
 - Public/private school
 - Qualifying education, literacy, career training programs: GED, ESL, vocational-technical, career training
 - Purpose is improving literacy, math, or English skills or to obtain post secondary education, job training, or employment
 - Publicly funded or administered by a nonprofit OR show program’s “demonstrated effectiveness”

Crime Bars to DACA

| |
|---|
| <p>Felony</p> <ul style="list-style-type: none"> • Possible sentence of more than 1 year |
| <p>Significant misdemeanor</p> <ul style="list-style-type: none"> • Possible sentence of less than 1 year (but more than 5 days); AND • a crime of domestic violence, sexual abuse or exploitation, unlawful possession or use of a firearm, drug sale, burglary, or DUI; OR • Any other misdemeanor where the person was sentenced to more than 90 days. <ul style="list-style-type: none"> • Time served– suspended sentence not included • Jail time does not include time spent in custody under an ICE detainer |
| <p>3 or more other misdemeanors</p> <ul style="list-style-type: none"> • Not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct |

Exceptions to the Crime Bars

- Minor traffic offense not considered misdemeanors for DACA purposes.
- Expunged convictions are not a bar
- Juvenile adjudications are not a bar but may be considered in the public safety context
 - Some state confidentiality laws prohibit sharing juvenile records without a court order.

How would you advise Rafael?

Rafael aged into DACA eligibility in 2017, when initial applications were not being accepted. He is excited to file his application now that Biden is in office. At age 15, Rafael was found delinquent in juvenile court for attempted burglary. He completed probation. Now 18, Rafael says he was charged as a minor in possession of alcohol and his hearing is in March. He was riding in the back of his friends car when they were stopped. Apart from his criminal issues he meets all other DACA requirements. Can he apply for DACA now?

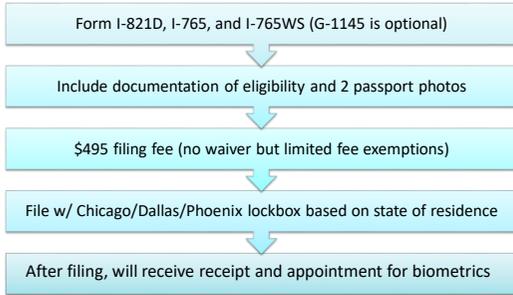
Practice Tips for Crimes Issues

- Review criminal records
- Assess risks based on current enforcement policy
- Include evidence of positive equities
- Look into the availability of expungements and post-conviction relief
- Refer complex cases if needed



FILING DACA APPLICATIONS

Application Process



Filing Initial Applications

- Clients with removal orders or pending proceedings still apply w/ USCIS
 - Include copy of removal order, IJ documents, BIA decision
 - <https://cliniclegal.org/resources/removal-proceedings/practice-advisory-motions-reopen-daca-recipients-removal-orders>
- Detained clients must apply with ICE



Supporting Evidence

| | |
|---|---|
| Identity | Birth certificate + photo ID; passport; consular ID |
| Arrival before age 16 | Travel records; school records; medical records; records from church or place of worship |
| No lawful status on 6/15/2012 (N/A if applicant never had papers) | I-94 showing date authorized stay expired; final removal order with date before 6/15/2012 |
| Continuous residence | Rent receipt; bills; school records; employment records; medical records; affidavits to fill gaps in evidence; other relevant documents |
| Presence on 6/15/2012 | |
| Education | Proof of enrollment; school records; transcripts; high school diploma, GED certificate |

Preparing Deni’s Supporting Documents

Deni does not have much evidence of continuous residence from 2008 to 2010. During that period, she was not enrolled in school and worked on and off as a baby sitter. At that time, she and her parents lived with John, a family friend. Neither Deni nor her parents are named in any lease. They paid their share of utilities to John in cash.

What Supporting Evidence Can Adriana Provide?

Adriana is a junior in high school. She was brought to the U.S. by her mom at age 2 in 2006. Adriana has records showing she has been enrolled in school since August 2010. She also has a medical records from January 2008 and December 2008. But Adriana has not been able to locate any documents from 2007, 2009 or the first half of 2010. How might she prove she has continuously resided here since June 15, 2007?

Filing DACA Renewals

Met initial DACA guidelines AND

- No absences after 8/15/2012 without advance parole
- Continuous residence in U.S. since DACA last approved; and
- Not barred due to crimes, public safety or national security

Reduced evidentiary requirements:

- New criminal records since last DACA approval
- Records if currently in removal proceedings
- No evidence or questions regarding education status

Filing DACA Renewals

- File at least 120 - 150 days before EAD expires
- Can only apply as renewal applicant if filing before current DACA grant expires or within 1 year of its expiration
- If filing beyond 1 year of most recent DACA grant expiring, must apply as initial applicant

When DACA Is Denied

- No right to appeal DACA denials
- Denied applicants may reapply
- Potential channels for administrative review of erroneous denials include:
 - USCIS Contact Center at 1-800-375-5283
 - USCIS Ombudsman - <http://www.dhs.gov/case-assistance>



ADVANCE PAROLE

Qualifying Purpose

- Humanitarian
 - Obtain medical treatment, visiting ailing relative, attend funeral, etc.
- Educational
 - Study abroad, academic research, etc.
- Employment
 - Conferences, training, client meetings, interviews, overseas assignments, etc.

* See USCIS DACA FAQ 57

Applying for Advance Parole

- May only apply after being granted DACA
- File Form I-131 w/ \$575 fee and proof of qualifying travel purpose (plus I-797 approval notice, photo ID, 2 passport photos)
- May request expedite if severe financial/humanitarian reason or compelling USG interests
 - <https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request>
- Emergency advance parole - <https://www.uscis.gov/green-card/green-card-processes-and-procedures/travel-documents/emergency-travel>

Advance Parole Considerations

- Screen for crimes, permanent bar, and other inadmissibility concerns
 - AP travel does not trigger unlawful presence bars *Matter of Arrabally and Yerrabally*, 24 I&N Dec. 771 (BIA 2012)
- Consider COVID-related travel restrictions
- Return on parole may create adjustment of status eligibility for some (esp. immediate relatives)
- Advance parole and consular processing

Should Freddy Travel on Advance Parole?

Freddy is a DACA recipient who entered EWI in 2005 and has remained here ever since. His most recent DACA approval and EAD are valid through July 2021. Freddy is married to a U.S. citizen who has filed an I-130 for him. He just learned his grandfather is sick and wants to visit him in Honduras. Freddy also tells you he recently had some trouble with the police. Should Freddy apply for advance parole?

Practice Tips

- Counsel clients about risks and benefits before applying for DACA and/or advance parole
- File initial applications without delay
- Screen for other relief, including relief from removal
- Consider strategies for helping clients gather evidence remotely
- 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
- Make sure that all your DACA applicants, past clients, update their current addresses with USCIS

DACA Resources

- CLINIC's DACA Resources <https://cliniclegal.org/issues/deferred-action-childhood-arrivals-daca>
 - Practice advisory on filing DACA applications
 - Advance parole FAQs
 - Screening tools
 - Evidence checklists
 - Program management tips -<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/category/daca/>



Catholic Legal Immigration Network, Inc.

National Office
8757 Georgia Avenue, Suite 850
Silver Spring, MD 20910
Main Phone: (301) 565-4800
Main Fax: (301) 565-4824

cliniclegal.org
fb.com/cliniclegal
