

Undocumented Legal Services Center

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University of California Undocumented Legal Services Center ("Center") New Presidential Administration Frequently Asked Questions (FAQ)

The FAQs below are informational and do not constitute legal advice. Each individual case is different, and advice may vary depending on the situation. Further, the information is changing on a daily basis. If you have any questions about your case, please contact a Center attorney for a consultation as soon as possible.

DEFERRED ACTION FOR CHILDHOOD ARRIVALS ("DACA")

1. I have not yet applied for DACA. Should I apply now?

If you have never applied to DACA before, there is a risk in applying for DACA for the first time. The future of the program and the privacy provisions are uncertain at this time. Applying for DACA provides your contact information, your residential address, your immigration history, and other important information to the Department of Homeland Security ("DHS"), which can then be used for enforcement purposes. You may also risk losing the filing fee of \$495 if the DACA program is revoked while your application is still being processed.

We do NOT recommend applying for DACA for the first time if you have had any prior criminal contacts (including arrests) or issues with gang affiliation, have been ordered deported at any time, and/or have had any issues with fraud.

If you would like to discuss your options, please contact our Center attorneys about your individual case.

2. I am a current DACA recipient. What will happen to the information I provided on my DACA application(s)?

Even though the original DACA program promised that information would not be shared with ICE, we do not know if the new administration will maintain that promise.

3. I currently have DACA. Should I file a DACA Renewal application?

As of this update, the DACA program has not been repealed and U.S. Citizenship and Immigration Services ("USCIS") is continuing to accept and process DACA applications. Thus, you can continue applying for DACA Renewal until further notice. However, you do risk losing your filing fee if DACA is revoked while your Renewal application is pending with USCIS.

Nonetheless, you should consult with an attorney and NOT apply until the attorney says it is ok to apply if any of the following applies to you:

- You have had <u>any</u> contact with law enforcement, including arrests, convictions, or any other criminal issues;
- You have had <u>any</u> contact with immigration authorities, including detention, deportation, or removal from the United States; or

You have moved and changed your address.

4. What will happen to my job if my Employment Authorization Document ("EAD") expires or is revoked? If DACA is revoked, can I work with the social security number (SSN) I got through DACA?

If you are employed through DACA work authorization, you will mostly likely be unable to keep your job. Lawyers and nonprofit organizations are looking for alternatives relating to on- and off-campus jobs. Unfortunately you cannot use your SSN once you are no longer authorized to work. While your SSN is permanently yours and can be used to file income tax returns, the work authorization allowed for on the social security card might be temporary. The social security card you received as a result of having a valid grant of DACA only allows for work authorization in conjunction with a valid grant of DACA.

5. What will happen to my tuition at UC if the DACA program ends?

Undocumented students are ineligible for Federal financial aid. However, the following California-based programs should not change regardless of what happens with DACA:*

- <u>The California DREAM Act</u>: California law that makes qualifying undocumented students eligible for state-based grants and institutional scholarships.
- <u>The California DREAM Loan Program</u>: Establishes state-based educational loans for undocumented students attending California public universities.
- <u>AB 540:</u> A California law that allows a qualifying student who would otherwise not be eligible for in-state tuition to pay in-state tuition fees at any UC, CSU, or CA community college.

*Check with the financial aid office at your school for policies specific to your campus, especially if you think you have been received funding based on your status as a DACA recipient.

TRAVEL

6. I am a current DACA recipient. Should I apply to Advance Parole to travel abroad?

No, you should not leave or be outside of the country under this new administration. If President Trump repeals DACA while you are abroad, it is very likely that you will not be permitted to re-enter the U.S. upon return, with or without Advance Parole. Even if you are seeking emergency Advance Parole, it is not advisable to leave the U.S. at this time.

If you want to remain in the United States, you should NOT leave the United States if you are undocumented or have a valid grant of DACA.

7. I applied for Advance Parole and my application is pending. Should I withdraw the application?

No, it is not necessary to withdraw your application if USCIS already cashed your check. Even if you receive Advance Parole before your travel date, you should not travel outside of the U.S.

8. Is it OK for me to travel to another state within the U.S.?

There are some risks of travelling on a domestic flight, because you could be asked about your immigration status by airport security. Airports are "ports of entry" into the U.S. – there are Customs and

Border Protection (CBP) officers at airports, and constitutional protections are limited at ports of entry. U.S. domestic flight security is governed by the Transportation Safety Administration ("TSA"), which is part of the Department of Homeland Security.

If you currently have DACA and it has not expired, you should be able to travel within the U.S via plane or other forms of transportation. However, you are still at risk of being stopped and asked about your immigration status. If you are travelling by plane, you should only show your valid, unexpired state ID that is NOT an AB60 license. You should not use your EAD card to minimize the risk of being asked about your immigration status.

If you are undocumented without DACA, it is not recommended that you use an AB60 license as identification for travel.¹

These risks are also present if you are traveling within 100 miles of any U.S. border, where CBP officers have certain additional powers and can operate immigration checkpoints. Please also see the American Civil Liberties Union's (ACLU) <u>fact sheet</u> on risks present within the "100-mile border zone."²

9. What is the current status of the Muslim Ban?

On March 6, 2017 the Trump Administration released a new Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States" to replace the January 27th, 2017 Executive Order (same title) that was halted in its entirety by the 9th Circuit Appellate Court. The new Executive Order is scheduled to take effect on March 16, 2017.

NEW IMMIGRATION ENFORCEMENT PRIORITIES

10. If I have been charged with a crime, how will the new enforcement priorities affect me? If I have been ordered deported in the past but I never left the U.S., will the new enforcement priorities affect me?

If you have been charged with a crime, the new priorities may affect you and you may be required to appear in immigration court and be at risk of being deported. Under the new Executive Order issued on January 25, 2017, President Trump made a priority for enforcement those who have been charged with a crime but not yet convicted (along with those who have been convicted).

If you have been ordered deported (or removed) in the past but did not comply with the order, you may also be at risk.

Please contact a Center attorney if you find yourself in any of these situations.

11. I have received a citation, should I go to court to contest my citation or pay my fine?

We recommend that you speak with a Center attorney before you go to court.

12. Can I be referred to immigration if I get arrested?

Yes, you may be referred. Under the Executive Order issued on January 25, 2017, you may be referred to immigration court even if you have not been charged for the crime.

¹ See https://www.ilrc.org/sites/default/files/resources/ab_60_4_27_15.pdf.

² Available at https://www.aclu.org/other/constitution-100-mile-border-zone?redirect=constitution-100-mile-border-zone.

13. California recently legalized marijuana for recreational use. If I buy marijuana and am caught with it, can that affect my DACA renewal application or any future immigration applications?

Yes, it can. Immigration is governed by federal, not state law, and marijuana is still unlawful to possess under federal law. Furthermore, it is important not to post images on social media of you engaging in marijuana use. If you have an arrest, citation, or conviction for any crime related to marijuana, or are generally concerned about how marijuana possession can impact your immigration status, please contact a Center attorney as soon as possible.

CONTACT WITH IMMIGRATION ENFORCEMENT

15. What should I do if I come in contact with ICE?

The U.S. Constitution guarantees rights to all people in the U.S., regardless of citizenship status, which includes the right to be free from unlawful searches and seizures. In practical terms, that means that during a police or immigration officer encounter, you have:

- the right to remain silent;
- the right to refuse consent to a search of your person, your vehicle, or your home without a valid warrant:
- the right to calmly leave the interaction if you are not under arrest; and
- the right to ask to speak to an attorney if you are arrested.

You should carry around the Immigrant Legal Resource Center's "red card" to read your rights in case of contact with ICE.³

To read more about your rights, please see the National Immigration Law Center's resources⁴.

16. What can I do to keep my family safe?

You can help them develop a safety plan, as well as inform them of their rights. Please see the Immigrant Legal Resource Center's family preparedness plan.⁵

OPTIONS FOR IMMIGRATION RELIEF

14. I am planning to marry my U.S. Citizen or Lawful Permanent Resident partner – how does that affect my status?

You may be able to adjust your status, but it depends on your specific situation. It is very important that your marriage is a "real" or "bona fide" marriage, which means that your marriage cannot be fraudulent. There are many factors that may preclude an applicant from gaining lawful permanent residency through marriage, such as the manner in which the applicant entered the United States and complex laws known as "grounds of inadmissibility." Please contact a Center attorney to assess whether this is the right option for you and your partner.

³ Available at https://www.ilrc.org/red-cards (available in English and Spanish).

⁴ Available at https://www.nilc.org/issues/immigration-enforcement/everyone-has-certain-basic-rights/. For multi-lingual Know Your Rights materials please see: http://www.immdefense.org/ice-home-and-community-arrests/.

⁵ Available at https://www.ilrc.org/family-preparedness-plan.

15. Is there any way I can legalize my status besides marrying a U.S. Citizen or Lawful Permanent Resident?

You might be eligible for some form of immigration depending on your individual circumstances. Aside from marriage to someone with lawful status, other options include:

- Family-based petitions
- U Nonimmigrant Visa for victims of serious crimes
- T Nonimmigrant Visa for victims of severe forms of human trafficking
- Special Immigrant Juvenile Status for youth under 21 who have been abused, abandoned, or neglected
- Violence Against Women's Act ("VAWA") for victims of abuse by a U.S. Citizen or Lawful Permanent Resident
- Asylum/Convention Against Torture for those who fear return to their home country

SANCTUARY

17. Is the University of California a sanctuary campus?

The terms "sanctuary city" and "sanctuary campus" have no clear definition and can refer to a wide variety of policies. While the University of California does not use the term "sanctuary campus," it is committed to ensuring the safety of its undocumented students, staff, faculty, and others who are a valued part of the UC community. The UC Office of the President has issued a set of principles in support of undocumented members of the UC community.⁶

18. Donald Trump promised to take federal funding away from "sanctuary jurisdictions." Does this mean that the University of California will no longer stand by President Napolitano's Principles?

For now, it appears that UC will stand by its commitment to not turn over records, not allow campus police to enforce immigration laws, and to severely restrict any ICE enforcement on any campus.⁷

How to Contact the UC Undocumented Legal Services Center:

E-Mail: <u>ucimm@law.ucdavis.edu</u> Office Phone: 530.752.7996

Website: http://law.ucdavis.edu/uc-undocumented

Please note that this FAQ is updated regularly as we get more information. We are working to address issues as they come up.

^{*}You may also contact the attorney assigned to your campus if you have his or her information.

⁶ *See* https://www.universityofcalifornia.edu/sites/default/files/Statement-of-Principles-in-Support-of-Undocumented-Members-of-UC.pdf.

⁷ See https://www.linkedin.com/pulse/what-president-trump-can-do-young-immigrants-janet-napolitano?articleId=6229781495943434240#comments-6229781495943434240&trk=prof-post.