

# Deferred Action for Childhood Arrivals (DACA) Initials Under Biden Administration

Arnold and Porter, LLP

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Sin Yen Ling, Immigration Project Director  
Emma Morgenstern, Immigrant Justice Corps Fellow/Attorney  
Jenifer Guzman, Community Advocate



# Volunteers of Legal Service

VOLS was founded over 35 years ago to close the justice gap through partnerships with community organizations, law firms and corporations.

We train and work with pro bono attorneys from law firms and corporations to provide free legal services to our clients.

Immigration  
Project

Elderly  
Project/Veterans  
Initiative

Microenterprise  
Project

Incarcerated  
Mothers Law  
Project

Children's  
Project

Unemployed  
Workers Project

Frontline  
Workers Project

Jericho Project

# VOLS' Immigration Project

Through **legal services** and **community education**, we provide support to immigrant youth and young people so they can pursue *higher education, employment and permanent residency*.



- ❑ New York City Public High Schools
- ❑ CUNY IIE, CUNY Mexican Studies
- ❑ Mixteca - Brooklyn
- ❑ Consulate General of Mexico
- ❑ New York State Youth Leadership Council
- ❑ Ali Forney Community Center

# Overview

- ❑ What is DACA?
- ❑ DACA - Basic Eligibility Requirements
- ❑ DACA - Benefits & What Does DACA Not Do
- ❑ DACA After Trump
- ❑ DACA Forms: Tips on Completing the Application
- ❑ DACA After Filing
- ❑ Perspectives from the Client
- ❑ Contact VOLs for HELP
- ❑ Q&A



# What is DACA?

- ❑ Use of prosecutorial discretion to **defer removal** action against a person determined on a case-by-base basis
- ❑ DACA does **not** provide lawful status
- ❑ **No statute**, but regulations under 8 CFR 274a.12(c) permit work authorization for a person “who has been granted deferred action,” with established “economic necessity”
- ❑ Subject to termination at any time
- ❑ As of Dec. 2020, 636,390 **active** DACA cases, but **1, 729,000** DACA-eligible.

# DACA: Basic Eligibility Requirements

- ❑ Must be **under 31** years of age on June 15, 2012
- ❑ **Aged 15 years** or older on the date of DACA application
- ❑ **Entry** to the United States **under the age of 16**
- ❑ **Continuous Residence** in the United States since **June 15<sup>th</sup> 2007**
- ❑ **Physical presence** in the United States on **June 15<sup>th</sup> 2012**
- ❑ **No** valid immigration **status** on June 15<sup>th</sup> 2012
- ❑ Possession of a **high school diploma** or GED certificate, or honorable discharge from the United States Armed Forces, or current enrollment in high school or GED program
- ❑ **No disqualifying criminal record** and not a threat to public safety

# DACA: Benefits

- ❑ EAD or **work authorization** for a period of two years
  - ❑ Enables the recipient to obtain a *Social Security Card*, *NY State ID Card*, and can qualify for New York State *unemployment insurance*
- ❑ Deferred action or **no deportation** for a period of two years
- ❑ May apply for **Advance Parole** to travel outside of the United States
  - ❑ Advance Parole fixes “entry” issues for certain recipients who “entered without inspection;”
- ❑ **Stops the accrual of unlawful presence** if DACA is approved
  - ❑ For applicants who file for DACA under 18, it stops the accrual of unlawful presence while the DACA application is *pending*

# DACA and New York State Unemployment Insurance

- ❑ DACA recipients were on the frontlines of the COVID-19 response
  - ❑ 29,000 healthcare workers (including 1,700 in NYC's healthcare industry)
  - ❑ 14,900 teachers
  - ❑ 142,100 food-related occupations including 82,000 in the restaurant industry
  
- ❑ DACA recipients are eligible for NY State Unemployment Insurance if:
  - ❑ They meet all of the UI requirements
  - ❑ They must have valid work authorization during a) the work period b) when they file for unemployment insurance and c) during the receipt of UI benefits
  - ❑ If a DACA recipient allows their DACA status to lapse, NYS Dept. of Labor will stop payment of UI benefits until DACA status is renewed.



# What Does DACA Not Do?

- ❑ DACA does **not** provide lawful status
- ❑ DACA does **not** provide a path to a green card nor a path to U.S. Citizenship
- ❑ DACA does **not** permit the sponsorship of family members for same or different benefits
- ❑ DACA does **not** qualify an applicant for federal financial aid (except NY State DREAM Act)

## DACA Requirement: Continuous Residence and Physical Presence

- Physically present in the U.S. on June 15, 2012 and continuously resided in the U.S. since before June 15, 2007
- A **brief, casual, and innocent** absence from the United States will not interrupt continuous residence, if before August 15, 2012, and
- The absence was short and reasonably calculated to accomplish the purpose for the absence
- The absence was **not** because of an order of exclusion, deportation, or **removal**
- The purpose of the absence and/or actions while outside the United States were **not contrary to law**

# DACA Requirement: Education

- ❑ **Currently enrolled** in high school or a GED program
- ❑ Obtained a **high school diploma or a GED**
- ❑ Education, literacy or career training program (including vocational) that is designed to lead to placement in postsecondary education, job training, or employment (and where you are working towards this)
- ❑ Honorably discharged veteran of the **Coast Guard or Armed Forces** of the United States

# Criminal Bars to DACA

- ❑ **Felony Conviction:** any federal, state, or local offense that is punishable by imprisonment of more than one year
- ❑ **Significant Misdemeanor Conviction:** any misdemeanor as defined by federal law (maximum imprisonment of one year or less but greater than five days and
  - ❑ Involves domestic violence, sexual abuse or exploitation, burglary, unlawful possession or use of firearm, drug distribution or trafficking, a DUI or
  - ❑ Involves an offense in which the individual was sentenced to time in custody of 90 days or longer (must be time served in custody and not a suspended sentence)
- ❑ **Three or more (non-significant) misdemeanor** offenses not occurring on the same date and not arising out of the same act, omission or scheme of misconduct
- ❑ Threat to national security or public safety

# DACA After Trump



- ❑ On 9/5/2017, Jeff Sessions announced the **rescission of DACA** leaving 800,000 recipients w/ the possibility of losing their status
- ❑ **Court challenges** in Federal Court in NY, CA, MD and DC
- ❑ On 6/18/2020, the **Supreme Court** (5-4) ruled that DHS' rescission of DACA violated the APA, b/c the agency did not provide a reasonable explanation for its action
- ❑ 7/28/2020 **Chad Wolf** memorandum
- ❑ On 12/4/2020, a District Court Judge issued an order vacating the Wolf memo and returning DACA to the terms that were in place on 9/5/17

# DACA Reinstated December 7, 2020



- USCIS accepting **first time applications** since Trump tried to end it in 2017.
- **Advance parole** is restored, but CDC requires Covid negative test 3 days prior to arrival.
- Work authorization cards reverted back to 2 years from 1 year.
- **Texas Lawsuit pending.**
- Biden: Recommitment to the **DACA** program

# American Dream and Promise Act

## 10 Year Conditional Permanent Residence if:

- Was 18 years or younger at the time of arrival in the U.S.
- Has been admitted to an institution of higher education, has graduated high school or obtained a GED
- Continuously physically present since January 1, 2021

## Lawful Permanent Residence if:

- Meet higher education or military service or work requirements

- Passed the U.S. House of Representatives on 3/18/21 by 228-197 votes.
- Heading to the Senate. Requires 10 Republicans to vote with the Dems for passage.



# DACA Forms and Fees ([www.uscis.gov](http://www.uscis.gov))

- ❑ Form I-821D - DACA Application Form
- ❑ Form I-765 - Application for Work Authorization
- ❑ Form I-765 Worksheet
- ❑ Form G-1145 - Notification of petition/application acceptance
- ❑ Form G-28 - Notice of Appearance as an Attorney
- ❑ Fee: \$495 (payee: U.S. Department of Homeland Security)
- ❑ 2 passport photos, identity documents, ie., passport, cover letter, disposition of arrests, written declaration and evidentiary support



# USCIS Forms Tips (General)

- ❑ Type forms. Write in any answers in black ink
- ❑ No cross-outs or white-out
- ❑ Write n/a or none in sections that do not apply
- ❑ Write name and date of birth on back of photos
- ❑ Final versions must be printed single-sided (no double-sided)
- ❑ Most cases you will fill in Preparer information and sign
- ❑ Keep in mind that many clients have two last names
- ❑ Forms are downloadable at [www.uscis.gov](http://www.uscis.gov)
- ❑ COVID & Signatures
- ❑ **Read Section Headers Carefully! USCIS forms are Sworn Statements!**

# Form I-821D Tips

- ❑ No alien number (USCIS will assign # once forms are filed)
- ❑ No social security number (see I-765 form, pg. 2, question #14)
- ❑ **Place of initial entry** - Exact city or airport if entered with visa or parole, or general location where a person crossed over by car or foot (e.g. Arizona/Mexico Border or Canada/U.S. Border)
- ❑ **Status at Entry:** From drop-down box choose “no lawful status” for EWI or no proof of entry
- ❑ **Be sure to ask client** where he wants his USCIS notices/receipts/work permit to be mailed to (is home address a reliable address?)

# Form I-765 Tips

- Page 1: Part 1:  “Initial Permission to Accept Employment”
- No social security number (see I-765 form, pg. 2, question #14)
- Yes to Q. 14 “Do you want SSA to issue a Social Security Card?”
- Q. 25 Current immigration status = Undocumented
- Q. 27 Eligibility category is (c)(33)
- No alien number (USCIS will assign # once forms are filed)

# Form I-765 Worksheet Tips

- ❑ If a client is a full-time student and not working, put all zeros and “full time student”
- ❑ If a client is working, calculate how much money they would earn annually based on what they’re making right now
- ❑ Assets: What’s in your bank account and wallet?
- ❑ Income - assets = Expenses
- ❑ Briefly explain “economic necessity,” ie., I need work authorization so that I can work and pay my school tuition

# G-28 Form Tips

- ❑ Must complete and file G-28 as Attorney of Record to receive USCIS notices
- ❑ Bar Number = Attorney Registration Number

# Identity and Evidentiary Documents

- ❑ Work with clients to complete forms and review for errors
- ❑ Must attach **identity** documents, i., passport, NY Driver's License
- ❑ See attached "Documents To Collect For DACA"
- ❑ Challenge! **Tracking down 13 plus years of documents!**
- ❑ **USCIS will scrutinize** the "continuous residence and physical presence requirement" which means that you must have evidentiary support for every year up until 2021 (date of filing)
- ❑ Expect a Request for Evidence (**RFE**) Notice and 3-4 months to respond
- ❑ **Brainstorm with the client** to cover gaps in evidentiary support
- ❑ Prepare Cover Letter (make it easy for USCIS officer)

# DACA Filing Procedures

- ❑ Checks or Money Orders for \$495.00 should be made payable to:

**“U.S. Department of Homeland Security”**

- ❑ Send application via some form of trackable mail (**FedEX**)

Send application to the USCIS Chicago Lockbox Facility via courier (for NY) to

**USCIS**

**Attn: DACA**

**131 S. Dearborn - 3rd Floor**

**Chicago, Illinois 60603-5517**

# DACA After Filing

- ❑ Will get receipt notices in a few weeks followed by biometrics appointment
- ❑ Client can check the status of a case online using receipt numbers

Department of Homeland Security  
U.S. Citizenship and Immigration Services

I-797, Notice of Action

**THE UNITED STATES OF AMERICA**

<b>RECEIPT NUMBER</b> MSC-16-904-██████36		<b>CASE TYPE</b> I765 APPLICATION FOR EMPLOYMENT AUTHORIZATION	
<b>RECEIPT DATE</b> January 20, 2016	<b>PRIORITY DATE</b>	<b>APPLICANT</b> A207██████145 ██████, ANDREI	
<b>NOTICE DATE</b> March 31, 2016	<b>PAGE</b> 1 of 2		
ANDREI ROMANENKO LAW OFFICE OF ANDREI ROMANENKO 500 SUTTER STE 601 SAN FRANCISCO CA 94102		<b>Notice Type:</b> Approval Notice <b>Class:</b> C09P <b>Valid from</b> 03/31/2016 to 03/30/2017	
<small>Your application for employment authorization and advance parole has been approved. The form I-766, Employment Authorization Document with I-512 endorsement, will be sent to you separately. The Form I-766 with I-512 endorsement is issued to you, as a matter of USCIS discretion, on the basis of your pending application for adjustment of status, Form I-485.</small>			
<small>Please read this notice carefully, as it provides important information concerning use of the Form I-766 with I-512 endorsement.</small>			



# From the Dreamer's Perspective

- ❑ DACA is the result of young people fighting for immigration reform
- ❑ Trump and the last four years
- ❑ Creating an immigration record for the first time
- ❑ Challenges of tracking down documents and gaps of time
- ❑ DACA is not the DREAM Act



# Contact VOLs

- ❑ Sin Yen Ling, Immigration Project Director [sling@volsprobono.org](mailto:sling@volsprobono.org),  
347-521-5707
- ❑ Emma Morgenstern, Immigrant Justice Corps Fellow  
[emorgenstern@volsprobono.org](mailto:emorgenstern@volsprobono.org), 347-521-5726
- ❑ Jenifer Guzman, Community Advocate [jguzman@volsprobono.org](mailto:jguzman@volsprobono.org),  
347-521-5706