

## The Impact of the Current Injunctions on DACA Status and Renewals

On September 5, 2017, the Trump administration announced the termination of the Deferred Action for Childhood Arrivals (DACA) program as of March 5, 2018. The rescission [memorandum](#) provided that individuals with DACA status – which granted temporary deferred action status for individuals who qualified – could apply for renewal of that status up through October 5, 2017, if their status was due to expire by March 5, 2018. If every DACA holder had taken advantage of that one-month period, no DACA holder would have faced having an expired status until March 5, 2018.

For many reasons, including fear of the current administration, some 22,000 DACA holders did not renew their DACA status in that initial one-month period. As a consequence, many DACA holders have now lost or will soon lose their DACA status. As you may remember, DACA status is granted for two-year periods to individuals who arrived in the U.S. as children, are currently in school or have pursued their education through high school or a GED or have served in the military, and who have not engaged in serious criminal conduct and passed a background check. DACA status provides protection from deportation and work authorization. Nearly 700,000 students and young adults as of this past fall had DACA status.

This past January 9, 2018, a district court in California issued a nationwide [preliminary injunction](#) directing the government to begin taking DACA renewal applications again. The district court ruled that the government must allow any individual who held DACA status as of September 5, 2017, to now renew their DACA status even if that DACA status subsequently expired. That means that individuals who did not renew their DACA status during the one month period this past fall may now do so as may any other DACA holders even if their status is not due to expire for some time.<sup>1</sup>

On February 13, 2018, a district court in New York also issued a nationwide [preliminary injunction](#) on DACA. Although written by two different judges in cases brought by different

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<sup>1</sup> For more information on when it is best to apply for DACA renewal, see [www.nilc.org/issues/daca/faq-uscis-accepting-daca-renewal-applications](http://www.nilc.org/issues/daca/faq-uscis-accepting-daca-renewal-applications). Also bear in mind that USCIS may cease processing, not just cease accepting, renewal applications if and when the court injunctions are lifted.

plaintiffs, the two court orders have the same effect. Both courts have opened the door to DACA renewals – but not to first-time applications. Neither ruling prevents the expiration of individual DACA status if no renewal is secured.

The Trump administration has appealed both injunctions, which remain in place while the parties file briefs with the U.S. Courts of Appeals for the Second and Ninth Circuits. The administration had also attempted to skip the appellate courts and have the U.S. Supreme Court hear its petition immediately. On February 26, 2018, however, the Court denied that extraordinary request, so the case will continue before the federal appeals courts with decisions likely no sooner than this summer or fall.

Since the September 5 rescission memo, [approximately 122](#) DACA deferrals have expired each day. Once a deferral expires, those individuals are no longer protected against detention and deportation. This number will increase significantly after March 5, with [estimates](#) ranging from 976 DACA expirations per day to 1700 DACA expirations per day.

The decision as to whether to apply for a renewal is an individual one but there are good reasons for applying for renewal and seeking an extension of DACA status. If granted, such a renewal extends for two more years your DACA status securing that level of protection against immigration action for you. We recommend you renew in consultation with an [immigration attorney](#) or a [representative](#) accredited by the Board of Immigration Appeals to handle cases such as these. Such accredited representatives charge nominal amounts and have experience handling immigration cases. DACA holders may be eligible for another immigration status that would qualify them for a work permit or even a green card. A reputable immigration services provider can best advise as to these legal prospects. Know that overstaying one's DACA status – that is to say, residing in the U.S. without legal status – can jeopardize your future eligibility for visas or other grounds for legal residency. Consult an immigration attorney when evaluating that risk.

NEA has championed DACA from its inception and stands with our DACA members and students. NEA members who hold DACA status, or have DACA students in their classes, may have many questions. Here are our answers to some **FAQs** you may receive:

**Employment.** Even though the government has taken steps – enjoined by court order for now – to terminate the DACA program, DACA holders are authorized to remain and work until the expiration date on their DACA documentation. The school district is not allowed to ask individuals if they are a DACA holder or the basis for their work permit. It cannot terminate or discipline individuals based on their work permit. The district can ask for an updated permit if the expiration date is approaching and may terminate an individual's employment if it expires.

Tenure or similar continuing contract status you may have earned under state law is not a defense to deportation. Immigration enforcement is left almost entirely to the federal government and courts generally will not grant a stay or relief from deportation based on your

otherwise tenured or permanent status with your district. The loss of legal immigration status should not interfere with your right or access to vested pension funds, although penalties may apply for removing those funds early.

**Reliable sources of information.** A number of immigration advocacy organizations have DACA materials and expertise trusted by NEA. Their resources can be found here:

**American Civil Liberties Union Immigrants' Rights Project**

[www.aclu.org/issues/immigrants-rights](http://www.aclu.org/issues/immigrants-rights)

**Immigrant Legal Resource Center**

[www.ilrc.org/daca](http://www.ilrc.org/daca)

**National Immigration Law Center**

[www.nilc.org/issues/daca](http://www.nilc.org/issues/daca)

**United We Dream**

[www.unitedwedream.org](http://www.unitedwedream.org)

**Questions from Students.** Many students will be fearful and confused about the status of the DACA program, regardless of whether they or their families are directly affected. Bear in mind that your district may have limitations on how you can spend instructional time or use on-site bulletin boards. It is prudent to comply with those rules and to provide students with support as you would in any other circumstance. If your students or their families are seeking low-cost legal representation, we would recommend looking here: [www.immigrationlawhelp.org](http://www.immigrationlawhelp.org).

**Path to Permanent Status.** NEA is a strong proponent of a fair and long-lasting immigration policy for our country. We urge you to contact your representatives to support such legislation. Go to <http://educationvotes.nea.org/neaedjustice/daca/> for more information. Congress need not and should not wait any further before taking the bold and necessary action to support our education communities of colleagues, students, leaders, friends, and neighbors.