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**Deferred Action for Childhood Arrivals (DACA)**  
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The last few years have brought many changes and challenges to the Deferred Action for Childhood Arrivals (DACA) program. The last few weeks have seen yet another series of changes brought about by a Supreme Court decision and new guidance issued by the Department of Homeland Security.

Below, please find a history of the program and an overview of where it stands today. We hope that this information will help in advising clients regarding their DACA status. As always, please feel free to contact the IIU with any questions about your individual cases. Our intake form and other information are available at [www.publiccounsel.net/iiu/](http://www.publiccounsel.net/iiu/).

**The History of DACA**

2010 - The U.S. Congress failed to pass the “DREAM Act,” which would have created a pathway to citizenship for approximately one million undocumented individuals, known as “DREAMers,” who were brought to the U.S. as children but who had no lawful immigration status.

2012 – In response to the failure to pass the DREAM Act, the Department of Homeland Security (DHS) under President Obama created Deferred Action for Childhood Arrivals (DACA). DACA is an exercise of prosecutorial discretion, providing temporary relief from deportation (deferred action) and work authorization to qualifying undocumented immigrants brought to the United States as children.

2017 – The Trump administration rescinded the 2012 DHS memo that created DACA. DHS announced the permanent termination of the DACA program. Federal litigation resulted in two injunctions that allowed those with DACA to continue to renew their status, but prohibited any new applications.

2020 – After years of litigation, the Supreme Court held that DHS had improperly rescinded DACA. The Court did not rule on the legality of DACA itself, but instead held that DHS had violated the APA and therefore remanded the decision to the agency for review of its procedures.

**DACA Today**

***On July 28, 2020 the Department of Homeland Security issued a new memo outlining the steps it will take with respect to DACA following the Supreme Court decision. The key points are as follows:***

- DHS will not accept any new initial applications for DACA. This means if an individual has not had DACA before, they can't apply now.
- DHS will continue to renew DACA for those who were previously granted this status. However, DHS is shortening the period of a DACA grant from two years to one year. This means that people will have to re-apply (and pay the extremely high fees) annually. Each renewal also involves a criminal background check.
- DHS is currently reviewing the DACA program anew to determine whether the DACA program should be maintained, modified or terminated.

### **What does this mean for our clients?**

For any clients who currently have or have previously had DACA, they remain eligible to renew. Defense counsel representing such clients should continue to advise those clients about how their pending charges could impact DACA renewal.

The criminal bars to DACA renewal remain the same and a conviction or a CWOFF that falls within one of these categories will eliminate the possibility of renewing DACA:

- One "felony" - In Massachusetts, this means either a state felony or a state misdemeanor for which the maximum possible penalty under the criminal statute is more than one year.
- One "significant misdemeanor" - This category includes a Massachusetts misdemeanor for which the maximum possible penalty is one year or less, but more than five days and involves, domestic violence, sexual abuse or exploitation, burglary, OUI, or unlawful possession or use of a firearm, drug distribution/trafficking. It may also include any other misdemeanor for which the applicant was sentenced to more than 90 days imprisonment, NOT including suspended sentences, pre-trial detention, or time held on an ICE detainer.
- Three or more non-significant misdemeanors - This means three or more misdemeanor convictions not covered above, not occurring on the same day and not arising out of the same act, omission or scheme of misconduct. As above, a misdemeanor is defined as a criminal offense for which the maximum possible penalty is one year or less. Minor traffic offenses, like driving without a license, will not be considered towards this category.
- Delinquency adjudications will not automatically bar an applicant from a DACA renewal. However, delinquency findings will be reviewed on a case-by-case basis to determine whether the "particular circumstances" of the case warrant a positive exercise of discretion. Individuals with delinquency findings should consult with an immigration attorney prior to filing a DACA renewal.
- Discretion - DHS will review cases under a "totality of the circumstances" test and will review all arrests, dismissed charges, and rehabilitative programs. Even if a conviction does not fall within one of the grounds listed above, clients with CWOFFs or convictions should consult with an immigration attorney prior to renewal. An attorney will be able to review the facts surrounding all interactions

with the criminal legal system and assist an individual in deciding whether it is a wise choice to renew.

### **How do I know if my client already has DACA?**

Just because a person has lived in the U.S. since they were a child does not mean that they have been approved for DACA. The following documents verify DACA status:

- An individual with DACA will have an employment authorization card (EAD). An EAD that was granted based on DACA will indicate that it is a category “C33” card.
- U.S. Citizenship and Immigration Services, the agency responsible for processing DACA applications, will have sent a written notice of DACA approval to the client.
- Generally, DACA recipients have been living in the United States since at least 2007; they arrived in the United States before the age of 16; and they have a high school diploma, GED, are currently in school, or have been honorably discharged from the Coast guard or armed forces.

For additional information or questions about DACA or the criminal bars, please contact the CPCS Immigration Impact Unit at 617-623-0591 or [iiu@publiccounsel.net](mailto:iiu@publiccounsel.net).

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