

# DACA: Past, Present, and Future

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# Disclaimer

This presentation was given on September 11, 2017, and considered relevant laws and regulations in place on that date.

The information in this presentation is for informational purposes only, and not for the purpose of providing legal advice. Individuals should contact an experienced immigration attorney to obtain specific legal advice.

# What is DACA?

**DACA (Deferred Action for Childhood Arrivals)** allows a foreign national who is unlawfully present in the United States to apply for deferred action from removal, work authorization, and, in certain cases, a travel permit if she meets the following criteria:

- Entered the U.S. under the age of 16 (regardless if entry was improper)
- Under the age of 31 on June 15, 2012
- Continuously resided in the U.S. since June 15, 2007
- Meets educational requirements
  - G.E.D. or high school diploma;
  - Currently in school (including vocational); or
  - Honorably discharged from armed forces
- No conviction of a felony, significant misdemeanor, or 3 or more other misdemeanors and do not otherwise pose a threat to national security.
- Can pay the \$495 filing fee.

# Why did we need DACA?

U.S. Immigration Law is notoriously unforgiving of past immigration violations.

- **3-year Bar:** Foreign nationals who enter the U.S. without a lawful status, or overstay their authorized stay (I-94), and remain in the U.S. over 6 months but under a year, and depart the U.S. (either voluntarily or through a removal order) trigger a 3-year bar.
- **10-year Bar:** Foreign nationals who enter the U.S. without a lawful status, or overstay their authorized stay (I-94), and remain in the U.S. for a year or more, and depart the U.S. (either voluntarily or through a removal order) trigger a 10 year bar from re-entry.
- **Permanent Bar:** Foreign nationals who have an aggregate of a year or more of unlawful presence, and subsequently attempt to reenter the U.S. without inspection trigger a Permanent Bar.
- **A person who improperly entered the U.S. (without the authorization of a CBP Officer) cannot change their status in the U.S.**

# What DACA did and did not do

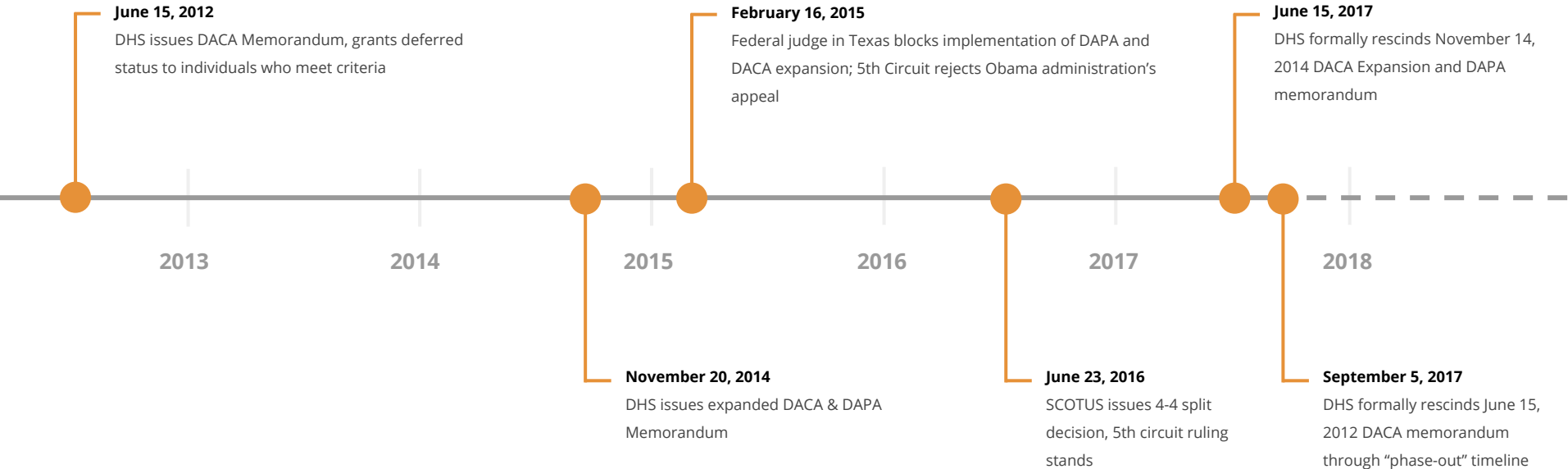
## DACA **did**:

- Grant deferred action of removal from the U.S.
- Stop the accrual of unlawful presence
- Allow recipients to apply for a social security number
- Allow recipients to apply for advance permission to travel

## DACA **did not**:

- Provide a direct path to citizenship
- Assign a legal “status”
- Forgive previous unlawful presence accrued after the applicant turned 18

# A brief history of DACA & DAPA



# What is the “phase-out” plan for DACA?

- **No new initial DACA applications.** USCIS will reject all initial DACA applications received after September 5, 2017.
- **No new Advance Parole Documents (Travel Permits) will be approved.** As of September 5, 2017, USCIS stopped processing all applications for Advance Parole for DACA recipients and will no longer accept new applications.
- All pending initial or renewal applications will be reviewed by USCIS if properly filed **before September 5, 2017.**
- Individuals whose DACA status expires **between September 5, 2017 and March 5, 2018**, can apply to renew their DACA status if, and only if, their renewal application is received **by October 5, 2017.**
- According to the memorandum, individuals whose DACA status expired **before September 5, 2017** may not renew.

# What does this mean for DACA recipients?

- A current DACA recipient can retain her deferred status and work authorization until her EAD expires. DACA recipients are legally eligible to work as long as EAD is valid.
- If a DACA recipient has a valid (unexpired) advance parole document, she may still continue to use the document to travel and return to the U.S. as long as she returns to the U.S. **before** the document expires.\*
- **Current DACA recipients that have a renewal application pending, should be sure to attend biometrics appointments and respond to any correspondence from USCIS.**
- **Current DACA recipients should also consult with an experienced immigration attorney to determine their other legal options.**

\* CBP always has the right to refuse to let a person reenter even if that person has advance parole. Speak with an immigration attorney before traveling.



# What if DACA status has already expired?

- USCIS has stated that it will **not** refer DACA recipients and applicants to Immigration and Customs Enforcement (ICE) for deportation unless these individuals meet USCIS's Notice to Appear guidance (fraud, committed certain crimes, or pose a risk to national security or public safety).
- If EAD (work permit) has expired, DACA recipients should NOT continue to work.
- Should speak to an immigration attorney to review your eligibility for other immigration options.

# What about family-based green cards?

- **Generally**, A foreign national who is an “Immediate Relative” of a U.S. citizen, defined as a U.S. citizen’s spouse, parent (if the U.S. citizen child is over the age of 21), or child (if the child is unmarried and under the age of 21), can apply for Permanent Resident status (a green card) in the U.S. if that person was properly admitted into the U.S. This can include:
  - Entering the U.S. on a visa; or
  - Entering the U.S. on Advance Parole.
- **Generally**, if a foreign national **did not have a proper entry**, she can apply for a green card as an Immediate Relative of a U.S. Citizen, if that person can show that her U.S. Citizen spouse or parent will experience **extreme hardship** if the foreign national was deported.

# A few other options for DACA recipients

- **Employment-based green card:** (can not adjust inside the U.S. would have to travel abroad which could trigger a bar)
- **Victims of certain crimes:** Victims of certain crimes, including victims of domestic violence, may be eligible for permanent resident status.
- **Cancellation of removal:** A foreign national who has lived in the U.S. for at least 10 continuous years (no trips outside the U.S. longer than 90 days), and has been placed in removal proceedings may be eligible for cancellation of removal if she can prove **exceptional and extremely unusual hardship** to a U.S. Citizen or green card holder spouse, parent or child.
- **Asylum:** If a foreign national fears persecution on the basis of their race, religion, nationality, membership in a particular social group, or political opinion from their government (or a group their government is unable or unwilling to control) may be eligible for asylum.

# Let's talk about the Legislative Branch.

# A brief history of the DREAM Act

- **August 1, 2001:** Senators Richard Durbin (D-IL) and Orrin Hatch (R-UT) first introduce The Development, Relief, and Education for Alien Minors Act (DREAM Act) in the Senate. The Act provided a pathway to legal status for undocumented youth who first entered the country as children.
- **2001- 2010:** Numerous iterations of the bill are introduced and fail, even with bipartisan support.
- **December 18, 2010:** After passing the House, the 2010 version of the Bill failed in the Senate when supporters did not have enough votes to beat a Republican filibuster (needed 60, only got 55.)
- **July 20, 2017:** Senators Lindsay Graham (R-SC) and Richard Durbin (D-IL) introduced the latest iteration of the Dream Act. Currently in Senate.

# What does the DREAM Act look like today?

The current iteration of the DREAM Act provides “conditional permanent residency” to individuals who meet the following criteria:

- Currently have DACA; **OR**
- Entered the U.S. under the age of 18 (regardless if entry was improper)
- Entered the U.S. before 4 years prior to the enactment of the Act and has resided continuously in the U.S.;
- Meets educational requirements
  - Received a high school diploma or GED; or
  - Currently in school (including GED program);
- No conviction of a crime where the term of imprisonment was more than a year, or convicted of three or more offenses for which the aggregate sentence was 90 days or more (with an exception for offenses which are essential to a person’s immigration status)
- No other serious immigration violations (other than improper entry and unlawful status)

After 8 years, the conditional permanent resident could apply to remove the conditions on her residency.

# What about Maryland's Dream Act?

Maryland (along with approximately 17 other states) have passed "Dream Acts," allowing Undocumented immigrants to pay in-state tuition.

- Maryland's dream act allows students who have attended a Maryland high school for 3 years and who can show that the student and/or their parent filed Maryland state income taxes during that time.
- While these types of state laws help undocumented immigrants overcome barriers to higher education, **a state cannot legalize or change the status of an undocumented immigrant.**

# Other Legislative Acts

## Recognizing America's Children Act - Rep. Carlos Curbelo, R-Fla

- Codifies DACA. Also provides pathway to citizenship with a 5 year conditional permanent residency.

## The American Hope Act - Rep. Luis Gutierrez, D-III.

- Raises eligibility age to include individuals who entered *before* 18th birthday.
- Does not include work or education requirements.
- Allows individuals to apply for 8 year conditional permanent residency status, but can remove conditions after 3 years.

## Bar Removal of Individuals Who Dream and Grow Economy (BRIDGE) Act - Rep. Mike Coffman, R-Colo

- Codifies DACA, and extends the program for 3 years.
- No pathway for permanent status.



# Looking for low-bono or pro-bono options for DACA recipients?

Visit [immigrationlawhelp.org](https://immigrationlawhelp.org)

**Thank you.**