



United We Dream
Network

FREQUENTLY ASKED QUESTIONS

The Obama Administration's Deferred Action for Childhood Arrivals

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On June 15, 2012, President Barack Obama announced that the U.S. Department of Homeland Security (DHS) would not deport certain DREAM Act–eligible undocumented youth. Under a directive from the secretary of DHS, these youth will be given a type of temporary permission to stay in the U.S. called “deferred action.” This program is often referred to as Deferred Action for Childhood Arrivals, or DACA.

Deferred action will be valid for two years and may be renewed at the end of the two years. Individuals who receive deferred action may apply for and obtain employment authorization.

WARNING: Do NOT take advice about your immigration case from a notary public or an immigration consultant. **Contact ONLY** a qualified immigration lawyer or an accredited representative for legal advice on your case. A directory of legal service providers in your area is available at www.weownthedream.org/legalhelp/.

What is deferred action?

Deferred action is a kind of administrative relief from deportation that has been around a long time. Through it, DHS authorizes a non–U.S. citizen to temporarily remain in the U.S. The person may also apply for an employment authorization document (a “work permit”) for the period during which he or she has deferred action.

Deferred action will be granted on a case-by-case basis. Even if you meet the requirements outlined below, DHS will still have to decide whether to grant you deferred action.

A grant of deferred action is *temporary* and does not provide a path to lawful permanent resident status or U.S. citizenship. However, a person granted deferred action is considered by the federal government to be lawfully present in the U.S. for as long as the grant of deferred action is in effect.

This FAQ previously was titled “Frequently Asked Questions: Obama Administration’s Relief Process for Eligible Undocumented Youth.”

Who is eligible for DACA?

To be eligible for deferred action, you must:

- Have been born on or after June 16, 1981.
- Have come to the United States before your sixteenth birthday.
- Have continuously lived in the U.S. since June 15, 2007.
- Have been present in the U.S. on June 15, 2012, and on every day since August 15, 2012.
- Not have lawful immigration status. To meet this requirement (1) you must have entered the U.S. without papers before June 15, 2012, or, if you entered lawfully, your lawful immigration status must have expired as of June 15, 2012; and (2) you must not have lawful immigration status at the time of your application.
- Be at least 15 years old. If you are currently in deportation proceedings, have a voluntary departure order, or have a deportation order, and are not in immigration detention, you may request deferred action even if you are not yet 15 years old.
- Have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, be an honorably discharged veteran of the Coast Guard or U.S. armed forces, or “be in school” on the date that you submit your deferred action application. See below for more information about meeting the “be in school” requirement.
- Have not been convicted of a felony offense. A felony is a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year.
- Have not been convicted of a significant misdemeanor offense or three or more misdemeanor offenses. See below for more information about offenses that may disqualify you.
- Not pose a threat to national security or public safety. (DHS has not defined what these terms mean but has indicated that they include gang membership, participation in criminal activities, or participation in activities that threaten the U.S.)
- Pass a background check.

How do I request DACA?

You can submit your request for deferred action on the [I-821D “Consideration of Deferred Action for Childhood Arrivals” form](#).¹ You must submit this form, together with the I-765 and I-765WS forms requesting a work permit, to U.S. Citizenship and Immigration Services (USCIS). Information about work permits is available on USCIS’s website at www.uscis.gov/i-765. You must show an economic need for employment in order to get the work permit.

Go to www.uscis.gov/i-821d for more information about the mailing address and instructions. If USCIS finds that your request is complete, it will send you a receipt notice. USCIS will then send you an appointment notice to visit an Application Support Center (ASC) in order for you to be fingerprinted and photographed. USCIS will notify you of its final determination in writing.

¹ www.uscis.gov/USCIS/files/form/i-821d.pdf.

Will USCIS conduct a background check as part of my DACA request?

Yes. These checks involve checking the biographic and biometric information that you provide against a variety of databases kept by the federal government.

What are the fees associated with the DACA application?

The application fee is \$465, which consists of a \$380 fee for the employment authorization application and an \$85 fee for fingerprints. Fee waivers are not available. However, fee exemptions will be available in very limited circumstances.

How do I prove that I qualify for DACA?

To prove that you qualify for DACA, gather documents such as financial records (lease agreements, phone bills, credit card bills), medical records, school records (diplomas, GED certificates, report cards, school transcripts), employment records, and military records.

In order to prove that you have lived in the U.S. continuously since June 15, 2007, you must provide documents that prove you were in the U.S. during the period since June 15, 2007. As a rule of thumb, consider submitting a document for each 12-month period since June 15, 2007. If you do not have documents to establish that you were in the U.S. for a significant part of the period between June 2007 and the present time (in other words, if there is a gap in your documentation), consider submitting affidavits from at least two individuals who have personal knowledge that you were in the U.S. during that gap.

If you have ever been arrested, you should request a copy of your criminal history from your state or the Federal Bureau of Investigation (FBI). You should also request, from each court in which you had a criminal case, a letter describing what the judge ultimately decided in each case. This letter may be referred to as a “disposition letter” or “certificate of disposition.”

I have been paying taxes using an ITIN number. Do I list that on my application?

No. *Only list a **Social Security number that was properly issued to you by the Social Security Administration.*** Do not list an ITIN (Individual Taxpayer Identification Number) — or any other Social Security numbers that you may have used — on your deferred action and employment authorization applications.

What qualifies as “currently in school?”

To meet the “currently in school” requirement, you must be enrolled in:

1. a public or private elementary school, junior high or middle school, high school, or secondary school;
2. an education, literacy, or career-training program (including vocational training) that is designed to lead to placement in postsecondary education, job training, or employment, and where you are working toward such placement; or
3. an education program assisting students either in obtaining a regular high school diploma or its recognized equivalent under state law (including a certificate of completion, certificate of

attendance, or alternate award), or in passing a GED exam or other equivalent state-authorized exam.

What is considered a “significant misdemeanor”?

A misdemeanor is a crime for which the maximum term of imprisonment is one year or less but more than five days. A single “significant misdemeanor” will make you ineligible for deferred action. DHS considers the following to be “significant misdemeanors”:

- An offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; driving under the influence (these offenses are considered “significant misdemeanors” regardless of the length of the sentence that is imposed).
- For offenses not listed above, a “significant misdemeanor” is one for which you were sentenced to more than 90 days in custody. This does not include a suspended sentence.

What types of offenses count towards the “three or more misdemeanor offenses”?

- Any misdemeanor (not meeting the definition of “significant misdemeanor”) for which you are sentenced to at least one day in custody counts toward the “three or more misdemeanor offenses.”
- DHS will not count minor traffic offenses as misdemeanors, unless they are drug- or alcohol-related.
- DHS will not count immigration-related offenses created by state immigration laws as being misdemeanor offenses or felonies. For instance, Arizona, Alabama, and other states have passed laws that make it a crime for undocumented people to engage in many everyday actions; these crimes will not be counted as felonies or misdemeanors.
- DHS will look at all the circumstances in a case to decide whether a person who has committed a criminal offense will be given deferred action.

If I am granted deferred action, how long will deferred action last?

Deferred action will be granted for two years. When the two-year period expires, the grant of deferred action can be renewed, pending a review of the individual case.

If my period of deferred action is extended, will I need to reapply for my work permit?

Yes. If you apply for and receive an extension of the period for which you are granted deferred action, you must also request an extension of your employment authorization.

I was granted deferred action and received my work permit, but then I lost it. Can I get a replacement card?

Yes, but you will have to apply for a replacement card using Form I-765. You will have to pay the work permit application fee.

May I travel outside the United States?

If you travel outside of the U.S. after August 15, 2012, you won't be eligible for deferred action. However, if USCIS approves your request for deferred action, you may travel outside of the U.S. if you apply for and receive advance parole from USCIS. Advance parole allows you to leave the U.S. for humanitarian, employment, or educational reasons. You can apply for advance parole on USCIS Form I-131 (www.uscis.gov/i-131). Check with an attorney before leaving the U.S., as receiving advance parole does *not* guarantee that you will be able to return to the U.S.

Will I be able to get a driver's license?

State driver's license requirements for immigrants, and the documents accepted as proof of eligibility, vary by state. Since a grant of deferred action is listed in the federal Real ID Act as a basis of eligibility for a license that's recognized for certain federal purposes, there are strong arguments for states to grant driver's licenses to people granted deferred action. It may take advocacy to ensure that your state recognizes persons granted deferred action as eligible for a license.

NILC is keeping track of [new developments](#) in state laws, policies, and practices to determine whether DACA recipients are obtaining driver's licenses.²

Will I be able to get in-state tuition?

The rules on in-state tuition for immigrants vary by state and sometimes by college system. Thirteen states already [allow certain students to pay in-state tuition](#), regardless of their immigration status.³ You will need to check your state's laws and policies to determine whether residents who have deferred action are eligible to pay in-state tuition. In some states, students must have resided in the state in a lawful status for at least a year in order to qualify for in-state tuition.

Although there are strong arguments for letting resident students with deferred action pay in-state tuition, it may take advocacy to ensure that your state recognizes deferred action as an eligible category and accepts your documents for in-state tuition purposes.

If I am currently detained by ICE, how do I get deferred action?

Right now U.S. Immigration and Customs Enforcement (ICE) is reviewing the cases of people who are detained. If ICE identifies a case as meeting the eligibility requirements outlined above, ICE should offer the person deferred action for a period of two years. If ICE has not reviewed your case, you should inform your detention officer or contact the ICE Office of the Public Advocate at 1-888-351-4024 (staffed 9 a.m. - 5 p.m., Monday - Friday) or by email at EROPublicAdvocate@ice.dhs.gov.

I have a deportation case but I am not detained. How do I get deferred action?

People who are not detained can submit a deferred action request to USCIS even if they are currently in removal proceedings, have a final removal order, or have a voluntary departure order. A

² See www.nilc.org/dacadriverslicenses.html.

³ See www.nilc.org/basic-facts-instate.html.

request should include evidence that you are eligible for deferred action under the criteria outlined above.

If I request DACA, will the information be kept confidential?

According to USCIS, information provided in a request for deferred action, including information about family members and guardians, will not be shared with ICE and U.S. Customs and Border Protection (CBP) for the purpose of deportation proceedings unless your case involves fraud, a criminal offense, a threat to public safety or national security, or other exceptional circumstances. However, the information in your request may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than deportation, including to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense.

If my DACA request is denied, will I be placed in deportation proceedings?

If you are denied deferred action under this process, USCIS will refer your case to ICE if your case involves a criminal offense, fraud, or a threat to national security or public safety. It is against USCIS policy to refer cases to ICE where there is no evidence of fraud, a criminal offense, or a threat to public safety or national security, unless there are exceptional circumstances. *Before you request deferred action, however, it is **really important** that you first consult with a reputable attorney or legal services program if you have ever been arrested or convicted of any kind of crime.*

How is DACA different from the DREAM Act that has been proposed in the past?

The DACA announcement came from DHS, which is one of the agencies within the federal government's executive branch. DHS has the power to make certain decisions about the enforcement of immigration laws. *The executive branch does not have the power to create a path to permanent lawful status and citizenship.* Only Congress, through its legislative authority, can grant that.

The DREAM Act is legislation that must be passed by Congress to become law. Past DREAM Act proposals have included a path to citizenship. In contrast, a grant of deferred action is only temporary and does not provide a path to lawful permanent residency or citizenship.

Deferred action is only a temporary fix. We still need to fight for the DREAM Act to be enacted so undocumented youth can have a permanent solution.

Should I request deferred action?

Try to get as much information as you can and to attend a workshop or clinic. After consulting with a reputable attorney or legal services program, especially if you have ever been arrested or convicted of any kind of crime, you should make your own decision about whether you want to ask for deferred action.

Remember, USCIS will not tolerate fraud, so make sure your deferred action request is accurate and complete before you submit it.

Why should I apply for deferred action if I can just wait for Congress to pass an immigration reform law?

While immigration reform is currently being considered by Congress, there is no guarantee that an immigration reform bill will pass. If a bill does pass, it's not yet clear who will qualify to apply for legal status.

My deferred action application has been pending for too long. Should I be concerned?

Although case processing timelines are not available at this time, USCIS has said it is taking them, on average, 4 to 6 months to make a decision on an application.

Where can I get more information?

Own the Dream is a national campaign to help aspiring Americans brought to the U.S. as children take advantage of the opportunity to request deferred action and work permits. NILC is proud to be a member of this important campaign, and we encourage you to visit www.weownthedream.org to [determine your eligibility](#),⁴ to [find free or low-cost clinics and licensed reputable attorneys](#) in your area,⁵ to [review information](#) about deferred action,⁶ and to [connect with other DREAMers](#).⁷ Own the DREAM has also established a toll-free hotline (1-855-DREAM-D-1) for information about deferred action, as well as a text messaging system (text "OwnIt" to 877877) to receive the latest alerts and updates about deferred action for DREAMers.

If you are in deportation proceedings, you can visit the ICE website at www.ice.gov or call the ICE hotline at 1-888-351-4024 (9 a.m. - 5 p.m., English & Spanish). Everyone else can visit USCIS's website, www.uscis.gov/childhoodarrivals, or call the USCIS hotline at 1-800-375-5283 (8 a.m. - 8 p.m., English & Spanish).

How can I get involved with the DREAM movement?

Join the Own the Dream campaign and visit www.weownthedream.org to find a DREAM group in your area. We encourage you to get involved and join the movement for social justice!

This document is a work in progress and will be updated as DHS releases more details about the deferred action process. Check www.nilc.org/FAQdeferredactionyouth.html for updates.

NOTE: This FAQ contains general information and **is not legal advice**. Every case is different.

Do NOT take advice from a notary public or an immigration consultant. **Contact ONLY** a qualified immigration lawyer or an accredited representative for legal advice on your case.

⁴ www.weownthedream.org/deferred-action/.

⁵ www.weownthedream.org/legalhelp/.

⁶ www.weownthedream.org/faq/.

⁷ <http://unitedwedream.org/get-involved/affiliates/>.