

## Frequently Asked Questions

Updated as of December 15, 2020

These Frequently Asked Questions (FAQs) were prepared by the [Harvard Representation Initiative \(HRI\)](#). HRI provides **\*free\*** consultations and legal representation to undocumented and DACAmented members of the Harvard community. The responses to the FAQs listed below are informational and do not constitute legal advice. Every case is different, and advice will vary depending on the individual circumstances of each student. This guidance is valid as of December 15, 2020.

### PLEASE NOTE:

In compliance with the court order in *Batalla Vidal, et al. V. Wolf, et al*, effective December 7, 2020, the U.S. Citizenship and Immigration Services (USCIS) is:

- accepting first-time requests for DACA;
- accepting applications for advance parole; and,
- extending one-year grants of deferred action and employment authorization under DACA to two years.

If you are currently an undocumented or DACAmented Harvard student, either at the College or in a graduate program, please schedule a free consultation with an HRI attorney **prior to filing an initial or renewal DACA or advance parole application**. To make an appointment, please call 617-495-6648 or email [hri@law.harvard.edu](mailto:hri@law.harvard.edu).

### 1. What is DACA?

Deferred Action for Childhood Arrivals (DACA) is a program established by former President Obama in June 2012. Under DACA, the Department of Homeland Security (DHS) deferred taking action to remove qualifying undocumented immigrants and also granted renewable work authorization.

However, on September 5, 2017, DHS issued a [memorandum](#) detailing the rescission and eventual phase-out of the DACA program.

In early 2018, federal courts in California and New York enjoined the rescission of DACA, and USCIS [established a process](#) for resuming DACA renewals.

On April 24, 2018 a district court in Washington D.C. determined that the DACA rescission was “arbitrary and capricious” and therefore unlawful. That court went beyond the orders issued in the New York and California courts by requiring that USCIS accept new applications for DACA in addition to renewal applications. The order requiring the acceptance of new cases was, however, temporarily stayed and, as of the date of this publication, new DACA applications are not being accepted.

On June 18, 2020, the [Supreme Court](#) decided *Department of Homeland Security v. Regents of University of California*, in which it held that the Department of Homeland Security violated the Administrative Procedures Act and therefore improperly rescinded DACA.

## **2. Who qualifies for DACA?**

An individual qualified for DACA if they were able to show that they:

- (1) had come to the United States before they turned 16;
- (2) had lived continuously in the United States since June 15, 2007, up to the present time;
- (3) were under the age of 31 as of June 15, 2012;
- (4) had been physically present in the United States on June 15, 2012, having no lawful immigration status at the time they requested consideration of deferred action with USCIS;
- (5) were in school, had graduated or obtained a certificate of completion from high school, had obtained a general education development (GED) certificate, or were an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
- (6) had not have been convicted of a felony, significant misdemeanor, or three or more other misdemeanors and were not a threat to national security or public safety.

DACA does not provide lawful immigrant status or a path to citizenship, but it does provide authorization to work and deferral of removal from the United States.

## **3. Can I still apply for DACA?**

Following the recent Supreme Court and subsequent federal court decision in *Batalla Vidal, et al. V. Wolf, et al* both initial applications and renewal applications are being accepted by USCIS. To be eligible for DACA you must still meet the qualifications set forth in the original DACA policy. USCIS has never stopped the adjudications of DACA renewal applications; however, the lower court injunctions in California and New York did not require that USCIS continue to adjudicate first-time DACA applications and the D.C. court stayed its decision that would allow first time applications. Now that the Supreme Court has ruled that DACA was improperly rescinded, USCIS should start accepting first-time DACA applications.

## **4. What if I never applied for DACA?**

Even if you never applied for DACA you now able to apply now if you meet the eligibility requirements. Please contact that [Harvard Representation Initiative](#) if you would like to apply for the first time.

## **5. Who can apply for DACA renewal?**

Those who have previously received DACA *and* meet the following requirements can apply for renewal:

- Have not departed the U.S. on or after August 15, 2012, without first having been granted *advance parole*.
- Have resided continuously in the U.S. from the time the initial request for DACA was submitted up until the present time.
- Have not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and must not otherwise pose a threat to national security or public safety.

#### **6. If I am eligible to renew my DACA status, when should I apply?**

We are recommending that people who are eligible for DACA renewal apply if their DACA is expiring within a year. Previously USCIS had recommended that DACA renewals be submitted between 120-150 days prior to expiration. However, as of this publication, USCIS is accepting DACA renewals that are submitted more than 150 days prior to expiration.

Conversely, if you have fewer than 120 days remaining before your DACA expires, USCIS will accept your application; however, you run the risk of accruing unlawful presence if your application is not adjudicated before your current DACA status expires.

#### **7. What if I forgot to renew my DACA and it expired?**

You can still apply however you will may have to file a new “initial” DACA request if it has been expired for more than a year. For “initial requests” you will have to provide evidence that you qualify for DACA.

USCIS has issued the [following guidance](#) for applying for DACA after your previous DACA expired.

#### **8. What will happen if my DACA expires?**

If you are over the age of 18 and your DACA expires, you will begin accruing unlawful presence. Unlawful presence of longer than 180 days may result in a 3-year bar of your ability to return to the United States that will be triggered once you leave the United States. Unlawful presence of more than 365 days may result in a 10-year bar that will be triggered once you leave the United States.

#### **9. Will the information submitted on my DACA application be provided to ICE to be used to initiate removal proceedings against me?**

DHS has [stated](#) that the information submitted in DACA applications “will not be proactively provided to Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) for the purpose of immigration enforcement proceedings,” except under certain circumstances. It is recommended that you make an appointment with HRI well in advance of your DACA expiration in order to assess whether you might be eligible for any other forms of immigration relief.

Furthermore, a federal court in [Maryland](#) enjoined the Government from using information provided on DACA applications for enforcement purposes.

If DACA expires or is revoked, a DACA recipient cannot be deported without an opportunity to present their case in court, unless the DACA recipient has a prior removal order. ICE could decide to enforce prior removal orders for DACA recipients without initiating new removal proceedings. If you were in removal proceedings prior to having DACA, ICE could also seek to recommence your prior removal proceedings.

**10. Does Harvard admit and enroll undocumented/DACAmented students? Are they eligible for financial aid?**

Harvard admits, enrolls, and provides financial aid to students without regard to their citizenship or immigration status. There is no state or federal law that prohibits enrolling undocumented students. While undocumented students typically are not eligible for federal financial aid, students can still receive grants and loans from Harvard or other sources.

In addition, the University may provide undocumented students with financial assistance to cover costs of certain immigration applications, including the \$495 DACA renewal fee.

For more information, contact the [Harvard College Financial Aid Office](#), if you are an undergraduate student. If you are a graduate student, contact the financial aid office at your graduate school.

**11. Will I lose my financial aid from Harvard if my DACA expires or is revoked?**

No. Because your financial aid does not come from the federal government, your financial aid is not dependent on DACA.

For more information, contact the [Harvard College Financial Aid Office](#), if you are an undergraduate student. If you are a graduate student, contact the financial aid office at your graduate school.

**12. What does being a sanctuary campus mean? How am I protected if Harvard is not one?**

The “sanctuary campus” label is based on the “sanctuary city” concept. The general idea is that the institution, be it a university or city, has a policy of not voluntarily turning over undocumented immigrants to federal immigration officials and will not voluntarily assist with immigration enforcement efforts. Cambridge has designated itself a sanctuary city. While Harvard has declined to declare itself a sanctuary campus, it has longstanding policies that provide similar protections. The University does not voluntarily share information about the immigration status of undocumented community members, and federal officials attempting to

enforce immigration laws on campus are required to obtain a judicial warrant or other valid legal process requiring the University to provide access or assistance to federal agents.

Consistent with the policies of both Cambridge and Boston, Harvard's Police Department also does not inquire about the immigration status of any Harvard-affiliated persons it encounters. Furthermore, the Harvard Immigration and Refugee Clinical Program provides confidential legal advice to members of the Harvard community. Information communicated to HIRC attorneys is protected from disclosure to the government by the attorney-client privilege.

### **13. What are University and campus policies concerning ICE enforcement activities on campus?**

“Chief Francis D. Riley of the Harvard University Police Department (HUPD) issued a message restating the HUPD’s practice of not inquiring about the immigration status of faculty, students, or staff and noting that the department is not involved in enforcing federal immigration laws. This is consistent with the policies of the cities of Boston and Cambridge. Furthermore, the University does not and will not voluntarily share information on the immigration status of undocumented members of our community. And, as a matter of longstanding policy, law enforcement officials seeking to enter campus are expected to check in first with the HUPD and, in cases involving the enforcement of the immigration laws, will be required to obtain a warrant.”

You can read Chief Riley’s message in its entirety [here](#).

### **14. How does Harvard protect the privacy of students’ personal information?**

Regarding immigration status, the Harvard administration has previously [stated](#): “While we will not declare Harvard a ‘sanctuary campus’, we have made clear that the Harvard University Police Department does not inquire about the immigration status of faculty, students, or staff, and the department is not involved in enforcing federal immigration laws. The University does not and will not voluntarily share information on the immigration status of undocumented members of the community, and law enforcement officials seeking to enter campus must first check with campus police and obtain a warrant for cases involving immigration laws.”

### **15. Are there exceptions to the general rule that Harvard won’t disclose a student’s personal information?**

Harvard may be legally required to disclose a student’s personal information if it receives a valid, enforceable request from law enforcement or a court, such as a warrant or subpoena.

### **16. What kind of safety plan should I come up with in the event of an immigration-related emergency?**

- Have your immigration information in a place that is quickly accessible and let a family member or friend with immigration status know where this information is, so that they can easily access it in case of an emergency.

- Memorize the phone numbers of a qualified lawyer and of a family member or friend with lawful immigration status whom you can call, if picked up by ICE.
- Know what rights you have and what course of action you will take when speaking to immigration enforcement officials. Under the U.S. Constitution, whether you are undocumented or not, you have, for example:
  - The right to remain silent;
  - The right to refuse to open your door to immigration or law enforcement officials who do not have a signed judicial warrant;
  - The right to a lawyer (in immigration proceedings, at your own expense); and
  - The right not to sign any document without first speaking with a lawyer.
- Research your city to see if it has a sanctuary policy. If so, it may be useful to have contact information for your local police readily available so you can contact them in the case of an emergency or if you are unsure of the validity of the warrant being presented to you. In Massachusetts, sanctuary city ordinances have passed in Boston, Brookline, Cambridge, Chelsea, Concord, Lawrence, Newton, Northampton, Salem, Somerville, and Springfield.

You may also wish to speak with your family about planning for an emergency. Attorneys at HIRC are available to consult about this subject. For further information, see:

- [Family Preparedness Guide](#)
- [Planning for a Family Emergency](#)

## **17. What rights do I have even if I don't have documentation?**

Regardless of your immigration or citizenship status, you have certain constitutional rights. Your rights include:

- The right to remain silent.
- The right to refuse to consent to a search of yourself, your car, or your home without a judicial warrant.
- If you are not under arrest, you have the right to leave. You should do so without incident to avoid potentially violating other laws that can cause for arrest.
- The right to a lawyer if you are arrested. Ask for one immediately.

For more information, see: [ACLU Guide: What to do if you are stopped by the police, immigration, or the FBI.](#)

## **18. Where can I be targeted? Are places like churches and/or schools safe from enforcement?**

Historically, ICE has had a policy of not targeting individuals within the confines of the following types of institutions. However, ICE may still target individuals traveling to and from these institutions or it may change its policies entirely towards these “[sensitive locations.](#)”

- Current ICE policies provide that the agency will attempt to avoid raids or arrests near sensitive locations such as:
  - Schools, including known and licensed daycares, pre-schools and other

early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop;

- Medical treatment and health care facilities, including hospitals, doctors' offices, accredited health clinics, and emergency or urgent care facilities;
- Places of worship, including churches, synagogues, mosques, and temples;
- Religious or civil ceremonies or observances, such as funerals and weddings; and
- Public demonstrations, including marches, rallies, or parades.

### **19. Can immigration officials conduct deportation activities on Harvard's campus?**

Currently the Department of Homeland Security has a policy of not taking "enforcement actions" at "sensitive locations," including colleges and universities. For more information, see ICE's [FAQ on Sensitive Locations and Courthouse Arrests](#). Enforcement actions covered by this policy include arrests, interviews, searches, and surveillance.

As with any interaction with ICE, you have the right to remain silent and the right to refuse a search.

ICE must have a valid judicial warrant to search your home or dorm. If ICE claims to have a valid warrant, contact HUPD and the Office of General Counsel to make sure that they are aware of the enforcement activity.

For more information about ICE on campus, see our FAQs [here](#).

### **20. Is it safe to go to the police or to court?**

Individuals should go to the police if they feel as though they are in danger. There may be additional immigration benefits available to victims of a crime if they can show they were helpful in the investigation of the crime.

On June 20, 2019, a federal judge temporarily blocked ICE from making civil arrests at Massachusetts courthouses.

Among others, the following cities in the Boston area have declared themselves "sanctuary cities," meaning that they will not cooperate with ICE except as required by law:

- **Boston:** "Will not honor ICE detainer without a criminal warrant."<sup>1</sup>
  - The Boston Police Commissioner stated on January 31, 2017 that the Department does not target people based on their immigration status, does not

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<sup>1</sup> See [https://www.ice.gov/doclib/ddor/ddor2017\\_02-11to02-17.pdf](https://www.ice.gov/doclib/ddor/ddor2017_02-11to02-17.pdf).

take that status into consideration, and does not consider itself responsible for enforcing immigration laws.

- **Cambridge:** “Will not honor ICE detainer unless in cases where immigration agents have a criminal warrant or Cambridge officials have a legitimate law enforcement purpose not related to immigration.”<sup>2</sup>
  - Cambridge City Council released the following [statement on November 17, 2016](#): “the Cambridge Police Department does not undertake immigration-related investigations and does not routinely inquire into the specific immigration status of any person encountered during normal police operations.”
- **Somerville:** “Will not honor ICE detainer unless in cases where immigration agents have a criminal warrant or Cambridge officials have a legitimate law enforcement purpose not related to immigration.”<sup>3</sup>
  - The Mayor of Somerville [stated on November 21, 2016](#) “our local police and agencies don’t profile our residents to run immigration checks on them.”

If you are already in immigration proceedings, it is important that you attend all your appointments at immigration court. If you do not attend court, immigration judges can issue an order of deportation against you.

## 21. As a DACA recipient, is it safe for me to protest and march in rallies?

The Trump Administration has expanded the definition of “criminal alien” for the purpose of prioritizing deportations. If you are arrested at a protest or rally (e.g., for blocking the road), you may fit under the definition of “criminal alien” and be subject to removal.

There are a few precautionary measures you can take if you do plan to attend a protest.

- Check with the organizers to see if they have applied for a permit for the protest. Often, a permitted protest is coordinated ahead of time with authorities to ensure participants’ safety.
- Make sure you have the contact information for a lawyer available. The National Lawyers Guild has [legal support hotlines](#) available for people participating in political actions.

## 22. What is REAL ID?

REAL ID is a federal law that establishes standards that state-issued drivers licenses must meet in order to be used as a valid form of ID for purposes of accessing certain federal facilities or boarding commercial airlines.

## 23. Do I need REAL ID compliant identification to be able to travel?

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<sup>2</sup> See [https://www.ice.gov/doclib/ddor/ddor2017\\_02-11to02-17.pdf](https://www.ice.gov/doclib/ddor/ddor2017_02-11to02-17.pdf).

<sup>3</sup> See [https://www.ice.gov/doclib/ddor/ddor2017\\_02-11to02-17.pdf](https://www.ice.gov/doclib/ddor/ddor2017_02-11to02-17.pdf).



The Department of Homeland Security has [extended the REAL ID enforcement](#) deadline from October 2020 until October 2021 due to the Covid-19 outbreak.

Once REAL ID is enforceable, you will be required to present a REAL ID compliant ID to board a commercial aircraft. A valid foreign passport satisfies REAL ID; however, it is possible that a passport without a valid visa could be brought to the attention of immigration officials.

#### **24. What should I do if I am detained at an airport?**

If you have a lawyer, you should let the official detaining you know that you would like to speak with your lawyer.

If you do not have an attorney, call the local ACLU hotline. You can find your local ACLU number [here](#).

Additionally, the ACLU has prepared a “[Know Your Rights](#)” document regarding what to do when encountering law enforcement at airports and other ports of entry into the U.S.

#### **25. Can my family members and I fly to Puerto Rico with a driver’s license but no passport?**

Traveling within 100 miles of the U.S. border may expose individuals to detection, arrest, and detention by Customs and Border Protection (CBP) operating various checkpoints along these routes. It is possible to travel to Puerto Rico, a U.S. territory, with a government-issued ID such as a driver’s license, but there are risks to doing so. People may at times be asked to prove their immigration status.

**We strongly urge you \*not\* to leave the country without first consulting an immigration expert at the Clinic. If you have any questions about travel plans, please contact HRI. To make an appointment, please call 617-495-6648 or email [hri@law.harvard.edu](mailto:hri@law.harvard.edu).**

CAUTION: If you leave the United States after being ordered deported or removed, USCIS will likely consider you deported or removed. This may make you ineligible to return to the United States in the future.

#### **26. I have DACA and am or was planning to go abroad with advance parole. What should I do?**

Follow the recent Supreme Court decision and subsequent decision in *Batalla Vidal, et al. V. Wolf, et al.*, DACA recipients are eligible to apply for Advance Parole (i.e., written assurance that the recipient may leave the country and reenter). However, in light of the COVID-19 pandemic, [Harvard University strongly discourages](#) all international domestic travel to students, staff, and faculty. If you need to travel we strongly recommend that you meet with an attorney. If you have questions about travel, please contact the Harvard Representation Initiative at 617-495-6648 or email [hri@law.harvard.edu](mailto:hri@law.harvard.edu).

## **27. I am an ally. How can I help?**

There are various campus groups that work to advocate for immigrant rights including but not limited to the following:

- [Act on a Dream](#)
- [HLS Immigration Project](#)
- [Immigration Initiative at Harvard](#)
- [UndocuAllies Initiative](#)

Bi-partisan legislation, called the [DREAM Act of 2019](#), has been introduced in Congress and would provide protection to DACA recipients. You can call your Congressperson and advocate for passage of the DREAM Act or other legislative reform.