

Western Illinois University Presentation November 30, 2017

DACA update and other related immigration
developments



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Agenda

- 1) Background about DACA.
- 2) DACA Rescission consequences.
- 3) Are DACA recipients enforcement targets?
- 4) What actions might result in referral to deportation proceedings?
- 5) Common forms of immigration relief.
- 6) How the University can help.
- 7) Other issues.

Background about DACA.

- DACA (Deferred Action for Childhood Arrivals) program was established on 6/15/12 by President Obama.
- It provides:
 - Temporary protection from removal and work authorization
 - Eligibility for SSN and (in most states) a Drivers License
- ~ 800,000 across the U.S. have benefited from DACA
- Illinois is estimated to have ~42,000 DACA recipients (third-largest number after California and Texas)
- DACA recipients are in school, colleges, and the workforce

To be a DACA recipient, you must have:

- Been under the age of 31 as of June 15, 2012;
- Entered the United States before reaching your 16th birthday;
- Continuously resided in the United States since June 15, 2007, up to the time of initial application;
- Been physically present in the United States on June 15, 2012, and at the time of filing an application with USCIS;
- Had no lawful status on June 15, 2012;
- Graduated or obtained a certificate of completion from high school, obtained a general education development (GED) certificate, be an honorably discharged veteran of the Coast Guard or Armed Forces of the United States, or be in school right now; and
- Not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

How DACA recipients Have Benefited

- Many DACA recipients obtained legal employment for the first time after obtaining work authorization.
- DACA recipients are now in the workforce, colleges, and graduate school programs.
- Loyola University, for example, has a significant number of DACA recipients enrolled in medical school.
- Many DACA recipients married US Citizens and obtained their green cards. (unknown number)
- Many DACA recipients traveled outside the United States for the first time after obtaining advance parole.

DACA termination

- AG Jeff Sessions announced termination on 9/5/17.
- 10/5/17: Last day USCIS accepted renewal applications for expiration dates between 9/5/17 and 3/5/18.
 - No initial requests accepted as of 9/5/17.
 - Reports of USPS delivery delays impacted many applicants.
- Adjudications to continue through 3/5/18.
- DACA recipients will lose protection beginning on 3/6/18.



Summary of DACA Rescission on Sept. 5, 2017

- If you currently have DACA ...
 - Then you will retain deferred action and employment authorization until expiration, unless terminated or revoked.
- If USCIS received your initial or renewal DACA request and associated application on or before Sept. 5, 2017.
 - Then USCIS is continuing to adjudicate your request.
- DACA expired between 9/5/17 and 3/5/18 and you wished to renew.
 - Then your renewal request must have been submitted by Oct. 5
- If you have never applied for DACA protection.
 - Then you cannot apply.
- You have DACA and card was lost, stolen, or destroyed.
 - Then you may request a replacement EAD.



Consequences of DACA termination

- Deferred Action terminates at expiration of the 2-year granted period.
 - Deferred Action = U.S. will not pursue removal of the eligible grantee in exercising prosecutorial authority.
- Termination of deferred action makes individual removable.
- Work authorization terminates upon expiration of the Employment Authorization Document (EAD).

Legislative Proposals to Help DACA Recipients

- Bipartisan DREAM Act would provide DACA recipients with an earned path to citizenship.
- The bill is co-sponsored by Sen. Durbin of IL (D) and Sen. Graham of SC (R).
- DACA recipients appear to enjoy general support in Congress from *both* Democrats and Republicans.
- DACA advocates want a solution before the end of the year and are seeking to attaching the DACA fix to the end-of-year spending bill.
- The WH is attempting to extract significant changes to border security and legal immigration in exchange.

Are DACA recipients an enforcement target?

- ICE should not be arresting or detaining DACA recipients absent conduct making them ineligible for DACA (e.g., joining a gang or committing a significant misdemeanor)
- There have been reports of DACA recipients being arrested by ICE. ICE alleges that these were mistakes.
- Important for DACA recipients to know their rights if they encounter law enforcement.

Are former DACA recipients an enforcement target?

- Sept. 5, 2017 FAQ states that:
 - Information provided to USCIS in DACA requests will not be proactively provided to ICE and CBP for the purpose of immigration enforcement proceedings, *unless the requestor meets the criteria for the issuance of a Notice to Appear or a referral to ICE under the criteria set forth in the USCIS' Notice to Appear guidance.*

USCIS NTA issuance criteria

- A NTA is a Notice to Appear – a charging document placing an individual in immigration court proceedings.
- While ICE has wide-ranging authority to issue a NTA, information from a DACA application should only be used to issue a NTA *under limited circumstances*.
- Instances involving NTA issuance include:
 - A finding of fraud.
 - Criminal cases, particularly those involving egregious public safety.
 - Denial of asylum claims and certain other discrete forms of relief.



DACA recipients and deportation risks

- Former DACA recipients may not necessarily be proactively referred to ICE for enforcement.
- They may, however, be subject to the same risks as any other undocumented individual upon an intentional or unintentional encounter with ICE.
- This administration has suspended many priority enforcement memos and prioritized every undocumented individual.

Legal Options for DACA recipients Absent a Legislative Solution

- Lawful permanent residence:
 - Typically, requires inspection and admission or parole to the U.S. Note that unusual situations such as a wave through might be consider a valid admission.
 - Beneficiaries of visa petitions filed on behalf of the applicant, a spouse, or parent on or before April 30, 2001, by a family member or employer are exempt from this requirement.
 - Spouses of U.S. Citizens.
 - Spouses, children, and parents of U.S. Citizens or legal permanent residents who have been subjected to battery or extreme cruelty.
 - SIJS: Humanitarian relief available to individuals under 21 who seek the protection of a state juvenile court due to abuse, neglect, or abandonment.
 - Asylum: Past persecution or well-founded fear of future persecution on account of a protected ground.
 - Cannot be frivolous
 - Typically filed within a year of entering the United States, absent exceptional circumstances
 - If an affirmative application is denied, this will result in referral to immigration court.

Temporary visas

- U visas: Victims of certain qualifying crimes who suffered substantial physical or mental abuse from the crime and cooperated with law enforcement.
 - Require a certification from law enforcement.
 - Waives various forms of inadmissibility, including entering without inspection.
 - Such protection could also become available for a past crime.

Other DACA recipients who may have options

- Those benefiting from the LIFE Act (245(i))
- Those willing to consular process.
- The second option is risky – it would require departure from the US.

Common temporary visa categories

- H-1B workers: Subject to quota, this visa is reserved for specialty occupation workers with a job offer from a U.S. employer.
- L visas: Available to an individual employed with a multinational company abroad for at least a year as a manager or specialized knowledge worker who is offered employment as a manager or specialized knowledge worker with the U.S. branch.
- O-1 visa: Reserved for an individual who can demonstrate extraordinary ability in the sciences, athletics, arts, education or business.
 - Requires temporary intent.



Change of Status: generally not possible

- Change of status is generally not possible:
 - Change of status applications in the US (from one NIV to another NIV) require evidence of having continuously maintained the prior nonimmigrant status. 8 CFR 248.1(a)
 - 8 CFR 248.1(b) states that an exception can be made in USCIS's discretion if the untimely filing was:
 - due to extraordinary circumstances beyond the control of the applicant;
 - the individual did not otherwise violated his or her nonimmigrant status;
 - the individual remains a bona fide nonimmigrant; and
 - the individual is not the subject of removal proceedings.
 - DACA is not a nonimmigrant status so USCIS would likely deny a COS request
 - There's little risk, however, in trying to argue extraordinary circumstances, except for the loss of the filing fee

Common questions that might be asked during a consultation.

- Have you, your parents, siblings, or children ever been the victim of a crime in the U.S.? Have you reported such a crime to law enforcement?
- Have anyone (incl. an employer) filed a petition with immigration for you or your parents before 4/30/2001?
- Have you ever been harmed by a parent, spouse, partner, or child through actions such as hitting, choking, emotional abuse, etc.? Was the person who harmed you a U.S. citizen or green card holder?
- Are you afraid to return to your native country? Do you believe that you would be targeted by people or gangs based upon race, religion, national origin, political opinion, or membership in a particular social group?
- Are you LGBT and do you fear returning home because of your sexual orientation?
- Were you or your parents born in El Salvador or Guatemala and did you enter the U.S. before September 1990?
- Are you under 21, married, and have you been abused, abandoned, neglected or similarly mistreated by your parents?



Examples of an undocumented person's rights if they encounter immigration.

- You have the right to remain silent.
 - You can refuse to answer questions about where you were born or to show identity documents.
- You may refuse a search unless you are arrested (although an officer can always pat you down if the officer suspects you have a weapon)
- You have the right to speak with a lawyer:
 - You may ask an officer for a list of pro bono lawyers.
 - Carry your lawyer's contact information and a signed G-28, if you can.
 - Don't sign any paperwork without consulting a lawyer.
- You have the right to contact your Consulate.

What can a University do to help?

- 1) Educate DACA recipients about their rights both during and after DACA.
- 2) Consistently share accurate information in an evolving environment – information and rumors spread fast!
- 3) Consider providing legal resources to DACA recipients.
 - i) Some DACA recipients may have viable immigration strategies based on relationships with USCIs.
 - ii) Some DACA recipients or their family members may have other viable immigration strategies that they have not fully explored.
 - iii) Important for DACA recipients to understand the complexity of certain strategies (e.g.,
- 4) Keep DACA recipients apprised of legal and financial aid funds focusing on “DREAMers” (e.g., NIJC legal fund).
- 5) Engage and communicate your support to DACA recipients in a less politicized manner.
- 6) Provide mental health resources to these students.
- 7) Consider advocating with your member of Congress and Senator for a common-sense solution.

Other Issues

- Remember that you may have many undocumented students who just missed the cut-off for DACA protection
- Other immigration programs are on the chopping block (e.g., TPS for Haitian students).
- The third version of the travel ban is partially in force as a result of latest ruling by Ninth Circuit.
 - Admitted F-1s from the 6 affected countries should still be admissible.
 - Delays in visa issuance and travel risks are unpredictable.
- Students from certain countries are taking certain risks (e.g., applying for asylum while on F-1 status).



Questions?

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