Practice Advisory

Bond-Related Issues for DACA Recipients

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I. INTRODUCTION

On June 15, 2012, President Barack Obama announced the creation of the Deferred Action for Childhood Arrivals (DACA) program. President Obama created DACA as a temporary protection in the hope that Congress would eventually pass the DREAM Act and make broader immigration changes. Since the DACA program’s inception, nearly 800,000 youth were approved for DACA. These youth, who had come to the United States as children and met specific requirements, were able to obtain deferred action, a form of prosecutorial discretion where the government decides not to take action to deport a person without lawful status.

On September 5, 2017, President Donald Trump announced that he was rescinding the DACA program. President Trump rescinded DACA vowing to push for a permanent, legislative solution for DACA recipients even tweeting, “Congress, get ready to do your job – DACA!” On January 9, 2018, the U.S. District Court for the Northern District of California ordered the Department of Homeland Security (DHS) “to maintain the DACA program on a nationwide basis on the same terms and conditions as were in effect before the rescission on September 5, 2017,… with the exceptions (1) that new applications from applicants who have never before received deferred action need not be processed; (2) that the advance parole feature need not be continued for the time being for anyone; and (3) that defendants may take administrative steps to make sure fair discretion is exercised on an individualized basis for each renewal application.” On February 13, 2018, the U.S. District Court for the Eastern District of New York also issued a preliminary injunction requiring U.S. Citizenship and Immigration Services (USCIS) to accept DACA renewal requests from those previously issued DACA protection. As a result of the injunctions, USCIS resumed accepting requests for DACA renewals.

On February 15, 2018, three Senate bills proposing to solve the DACA question failed with President Trump issuing a veto threat against the bill that seemed to have the best shot of winning the 60 votes needed, the “Common Sense Coalition” bill co-sponsored by Senators Mike Rounds (R-SD) and Angus King (I-ME). As

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6 Regents of Univ. of California v. DHS, 279 F. Supp. 3d 1011, 1048 (N.D. Cal. 2018).
such, DACA remains in a state of flux.\textsuperscript{12}

DACA recipients who are not in the process of applying for a permanent benefit before USCIS and whose DACA protections will lapse if the injunction is lifted, should be prepared for the possibility of being placed into removal proceedings.\textsuperscript{13} Of those placed in removal proceedings, some may be apprehended and placed in immigration detention. Furthermore, even if the injunction remains in place, DHS could detain and place current DACA recipients in removal proceedings by alleging the commission of a criminal offense that renders them ineligible for DACA or no longer worthy of prosecutorial discretion. For these reasons, practitioners should be familiar with the bond legal standards and bond procedures.

Given the strict eligibility requirements for DACA, it is likely that detained DACA recipients will be subject to the Immigration and Nationality Act’s (INA) detention authority found at § 236(a) and be able to secure a low bond or seek conditional parole. The aim of this practice advisory is to provide practitioners with a resource for representing former DACA recipients in INA § 236(a) immigration bond proceedings. It is not intended to be a comprehensive guide to representing clients in bond hearings.\textsuperscript{14} Section II of this advisory explores the DACA eligibility requirements in detail as these are relevant to the INA § 236(a) custody determination requirements. Section III discusses the common educational, professional, employment, and other characteristics for current DACA recipients that will help bolster INA § 236(a) custody determinations. Section IV considers the immigration detention implications of President Trump’s DACA rescission decision. Section V gives an overview of INA § 236(a) and custody redetermination procedures. Section VI offers potential arguments for practitioners seeking their DACA clients’ release from immigration detention.

II. ELIGIBILITY REQUIREMENTS FOR DACA PROTECTION AND GROUNDS FOR DACA TERMINATION

To be eligible for DACA protection, the requestor had to show that he or she:

• Entered the United States before age 16
• Continuously resided in the United States from June 15, 2007 to the present
• Was physically present in the United States, without lawful status, and under the age of 31 on June 15, 2012
• Was currently in school or had graduated or obtained a certificate of completion from high school, or obtained a GED, or had been honorably discharged from the U.S. Coast Guard or Armed Forces, and
• Had not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct, or posed a threat to national security or public safety.\textsuperscript{15}

\textsuperscript{12} Practitioners should thus note that this practice Advisory may not incorporate the current state of the DACA program. Significant events affecting the program may have occurred since the date of publication. Practitioners should check \url{www.uscis.gov} and \url{https://www.nilc.org/issues/daca/} for the latest DACA program updates.

\textsuperscript{13} Those DACA recipients who have a prior removal order are also subject to removal and should consult with an immigration practitioner to explore whether there is any basis for a motion to reopen.

\textsuperscript{14} For an in-depth guide to representing individuals in bond hearings, see CLINIC, A Guide to Obtaining Release from Immigration Detention (forthcoming 2018), which will be available on the CLINIC website, \url{https://cliniclegal.org/defending-vulnerable-populations}.

\textsuperscript{15} USCIS, Consideration of Deferred Action for Childhood Arrivals, \url{https://www.uscis.gov/archive/consideration-deferred-action-...
A felony includes any federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year. Practitioners should be mindful that different jurisdictions may punish identical crimes differently. Practitioners must therefore review the specific criminal statute at issue to know if the offense is punishable by imprisonment for a term exceeding one year.

A “significant misdemeanor” is not defined in the INA. Instead, USCIS developed the term for DACA purposes. According to USCIS, a significant misdemeanor includes any federal, state, or local criminal offense punishable by imprisonment for one year or less, but more than five days, and is an offense involving:

- Domestic violence
- Sexual abuse or exploitation
- Burglary
- Unlawful possession or use of a firearm
- Drug distribution or trafficking
- Driving under the influence (DUI), or
- Any other offense not listed above for which the person was sentenced to time in custody of more than 90 days.

Note that the sentence to time in custody of more than 90 days must involve time to be served in custody, and thus does not include a suspended sentence. The time in custody does not include any time that is served beyond the sentence for the criminal offense based on a state or local law enforcement agency complying with an Immigration and Customs Enforcement (ICE) detainer. DUIs are perhaps the most common “significant misdemeanors.”

A (non-significant) misdemeanor is any misdemeanor as defined by federal law. Federal law defines a misdemeanor as an offense with a maximum authorized term of imprisonment of one year or less but greater than five days. In addition to being a misdemeanor, it must meet the following criteria:

- Is not an offense of domestic violence, sexual abuse or exploitation, burglary, unlawful possession or use of a firearm, drug distribution or trafficking, or driving under the influence; and
- Is one for which the individual was sentenced to time in custody of 90 days or less. The time in custody does not include any time served beyond the sentence for the criminal offense that is based on a state or local law enforcement agency honoring a detainer issued by ICE.

Even those with a felony, “significant misdemeanor,” or three or more other misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct may have been granted DACA if USCIS determined that there were exceptional circumstances present warranting DACA protection.
Therefore, the absence of any of the above criminal history, or its presence, was not necessarily determinative, but was a factor to be considered in the unreviewable exercise of discretion.

Indicators that an individual poses a threat to national security or public safety include but are not limited to gang affiliations, participation in criminal activities, or participation in activities that threaten the United States. USCIS determines that an individual poses a threat to national security or public safety through the background check or other information uncovered during the DACA adjudication process. Only where USCIS determines that the individual presents exceptional circumstances will USCIS approve DACA notwithstanding a threat to national security or public safety.

Since its inception, USCIS has terminated individual DACA grants, placed DACA recipients in removal proceedings, and denied DACA renewal requests based on criminal, national security, or public safety grounds. USCIS does not electronically track in its systems the underlying reasons for termination of DACA. However, USCIS analysis of its available data shows the below number of terminations rounded to the nearest ten that were related to criminal convictions or arrests. These terminations related to criminal activity at various stages of the criminal process – from arrest to conviction – and include those with a felony, significant misdemeanor, or three or more other misdemeanor convictions:

- 2013: 30
- 2014: 130
- 2015: 290
- 2016: 760
- 2017: 820

USCIS analysis of its available data shows the following number of terminations rounded to the nearest ten that were related to alleged gang membership or affiliation:

- 2013: < 10
- 2014: < 10
- 2015: < 40
- 2016: < 30
- 2017: < 50

These terminations suggest that USCIS is actively reviewing DACA grants to determine which recipients no longer merit prosecutorial discretion because of criminal, national security, or public safety grounds. As such, even current DACA recipients are at risk of being placed into removal proceedings and detained.

22 Id.
23 Id.
24 Id.
26 Id.
III. COMMON CHARACTERISTICS OF DACA RECIPIENTS

During an interview with TIME Magazine, President Trump said, “[DACA recipients] got brought here at a very young age, they’ve worked here, they’ve gone to school here. Some were good students. Some have wonderful jobs. And they’re in never-never land because they don’t know what’s going to happen.”

Data on DACA recipients reflect a variety of achievements. Based on a 2017 national survey of DACA recipients, 91 percent of survey respondents reported being employed, 45 percent reporting being in school, 5 percent reported having started their own business after receiving DACA, 16 percent reported purchasing their first home after receiving DACA, and 65 percent reported purchasing their first car since obtaining DACA. Of those in school, 72 percent reported pursuing a bachelor’s degree or higher in various majors including accounting, chemistry, engineering, computer science, education, history, law, physics, and social work. In addition to these achievements, 72 percent of DACA recipients reported having a U.S. citizen spouse, child, or sibling.

Beyond having minimal, if any, criminal history, DACA recipients have been found to contribute to U.S. society and the economy in significant ways. Researchers have estimated that DACA recipients would contribute $460.3 billion to the U.S. gross domestic product over the next decade, if the program were permitted to continue. As a CATO Institute policy analyst concluded, “[e]ach DACA permit canceled is like burning tens of thousands of dollars in Washington.” Fifty-five percent of DACA recipients are employed, amounting to 382,000 workers or 0.25 percent of all U.S. workers. While significant numbers of DACA recipients are employed in professional occupations, the most common industries of employment are hospitality, retail trade, construction, education, health and social services, and professional services. The Migration Policy Institute reports there are approximately 9,000 DACA recipients employed as education professionals, and 14,000 in health care-related jobs. Many Fortune 500 companies—including Walmart, Apple, GM, Amazon, JP Morgan Chase, and Home Depot—employ DACA recipients. Ninety-eight percent of DACA recipients reported being bilingual, with the majority believing language skills to be an asset to their employer.

28 This rate of business start-ups is higher than that of both the American public as a whole—at 3.1 percent—and the entire immigrant population—at 3.6 percent. See Tom K. Wong et al., New Study of DACA Beneficiaries Shows Positive Economic and Educational Outcomes, Center for American Progress (Oct. 18, 2016), available at https://www.americanprogress.org/issues/immigration/news/2016/10/18/146290/new-study-of-daca-beneficiaries-shows-positive-economic-and-educational-outcomes/.
30 Id. at 8.
34 Id.
35 Id.
36 See Tom K. Wong et al., supra note 29.
Accessions Vital to National Interests (MAVNI) program.\textsuperscript{38}

Based on these statistics and the DACA eligibility requirements, these conclusions follow:

- All DACA recipients entered the United States as children\textsuperscript{39}
- All DACA recipients have over ten years of residence in the United States
- All DACA recipients lack significant criminal history as determined by USCIS’s criteria
- Most DACA recipients will have other positive equities that could bear on potential relief, such as educational attainment in the United States, positive employment history, and a record of paying taxes
- Many DACA recipients will have strong family ties, such as immediate family members who are U.S. citizens or lawful permanent residents

These characteristics are relevant to requests for release from ICE Enforcement and Removal Operations (ERO) custody or a custody redetermination request from the immigration judge (IJ).

**IV. DACA RESCISSION AND POTENTIAL IMMIGRATION DETENTION**

When the DACA program ends, the protections against removal afforded to DACA recipients will disappear. There is a risk that USCIS will share information obtained from DACA requests, such as individual home addresses, places of employment, and schools attended by DACA recipients, with ICE ERO.

When DACA was first announced, Question 10 on the Frequently Asked Questions page of the announcement asked: “Will the information I share in my request for consideration of deferred action for childhood arrivals be used for immigration enforcement purposes?” The answer provided in part:

Information provided in this request is protected from disclosure to [ICE] and U.S. Customs and Border Protection (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 USCIS’s Notice to Appear guidance (www.uscis.gov/NTA). Individuals whose cases are deferred pursuant to the consideration of deferred action for childhood arrivals process will not be referred to ICE… This policy . . . may be modified, superseded, or rescinded at any time without notice…\textsuperscript{40}

As of February 22, 2018, USCIS included the following on its website:

\textit{Information provided to USCIS for the DACA process will not make you an immigration priority for that reason alone. That information will only be proactively provided to ICE or CBP if the requestor meets the criteria for


\textsuperscript{39} The median age of survey respondents at the time they first entered the United States was six years of age. See Tom K. Wong et al., supra note 37.

\textsuperscript{40} DHS, Deferred Action for Childhood Arrivals, https://www.dhs.gov/archive/deferred-action-childhood-arrivals# (emphasis added).
the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS’ Notice to Appear guidance (www.uscis.gov/NTA). This information-sharing policy has not changed in any way since it was first announced, including as a result of the Sept. 5, 2017 memo starting a wind-down of the DACA policy. This policy, which may be modified, superseded, or rescinded at any time with or without notice (as has always been the case, and is noted in the archived USCIS DACA FAQs), is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law by any party in any administrative, civil, or criminal matter.  

Most recently, USCIS has reiterated that:

With regard to enforcement actions against current and expiring DACA recipients, DHS has repeatedly stated that, absent additional negative factors, DACA recipients are not a priority or target group for arrest or removal. With the general exception of certain classes of aliens — including those who otherwise pose a threat to national security or public safety — an individual who is a current DACA recipient, or who was a previous DACA recipient but has filed for renewal, will not be targeted for arrest nor will be removed from the United States while the individual has DACA protections or while the DACA renewal request is pending.  

In spite of this, some individuals have seen their DACA grants terminated and been placed in removal proceedings without being convicted of a disqualifying crime or having a new “negative” factor. The American Civil Liberties Union has filed a class action lawsuit on behalf of individuals who are still eligible for DACA, but have had their DACA grants and work permits terminated or revoked, without warning or an opportunity to respond. In spite of this, some individuals have seen their DACA grants terminated and been placed in removal proceedings without being convicted of a disqualifying crime or having a new “negative” factor. The American Civil Liberties Union has filed a class action lawsuit on behalf of individuals who are still eligible for DACA, but have had their DACA grants and work permits terminated or revoked, without warning or an opportunity to respond.

Of course, DACA recipients with any prior criminal history are at an increased risk of detention, per the Trump Administration enforcement priorities that include anyone with a criminal history. Any new contact with the criminal justice system increases the individual’s risk of ICE detention. It is possible that an individual will receive a notice asking them to appear at the local ICE ERO office or that an ICE ERO officer would go to the individual’s home or place of employment to detain the individual. Practitioners representing DACA recipients, their families, and communities must thus be prepared for this enforcement and detention possibility. Moreover, while all DACA recipients would be at risk of immigration detention when the program is ended, DACA recipients with orders of removal would perhaps face the most significant risks. DACA was expressly available to requestors with removal orders who otherwise qualified, and the Form I-821D asked for information about when and where any removal order was entered. DHS could revoke the DACA protections of those with an order of removal to seek to enforce the removal order. Those with orders of removal would.

44 Id.  
46 USCIS, Frequently Asked Questions, https://www.uscis.gov/archive/frequently-asked-questions#education (“This process is open to any individual who can demonstrate he or she meets the guidelines for consideration, including those . . . with a final order, or with a voluntary departure order (as long as they are not in immigration detention).”).  
48 USCIS, Frequently Asked Questions, https://www.uscis.gov/archive/frequently-asked-questions (“Question 27: Can my deferred action under the DACA process be terminated before it expires? A27: Yes. DACA is an exercise of prosecutorial discretion and
not be subject to INA § 236(a) detention authority and would instead be vulnerable to detention without IJ review and swift removal. Practitioners representing DACA recipients with prior orders of removal should refer to CLINIC’s practice advisory entitled “Motions to Reopen for DACA Recipients with Removal Orders” and prepare their DACA recipient clients, their families, and communities for the special considerations inherent to these cases.49

V. OVERVIEW OF DETENTION AUTHORITIES AND PROCEDURES

There are a number of statutory grounds under which DHS has the authority to detain an individual. They include general discretionary detention authority under INA § 236(a), detention of individuals with certain criminal history under INA § 236(c), detention of “arriving aliens” and other individuals subject to expedited removal proceedings, and detention of individuals with administratively final orders of removal under INA § 241.50 Generally, INA § 236(a) is the detention authority that will be most relevant to former DACA recipients, and therefore this advisory focuses on release strategies for individuals detained under that authority.

Section 236(a) of the INA governs the detention of individuals who are in INA § 240 removal proceedings and who are not subject to the mandatory detention provisions of INA § 236(c). Section 236(a) of the INA may be characterized as describing DHS’s discretionary, or permissive, detention authority. In general, individuals who are detained under INA § 236(a) are eligible to seek a custody redetermination or “bond hearing” before an IJ.

It is important to note that some DACA recipients will fall under other detention authorities. As previously mentioned, DACA recipients with final orders of removal will fall under INA § 241, which generally has been held to not provide IJs jurisdiction to issue a bond.51 Other DACA recipients may fall under INA § 236(c)’s mandatory detention authority, meaning that they cannot be released on bond.52 Although most DACA recipients will have minimal, if any, criminal history, even a minimal criminal history can subject an individual to mandatory detention.

One basis for being subject to INA § 236(c) mandatory detention is being inadmissible by reason of having committed an offense in INA § 212(a)(2), which includes:

- A single crime involving moral turpitude (CIMT), except
  - A petty offense, defined as an offense for which the maximum possible penalty does not exceed one year in jail, and the actual sentence ordered did not exceed six months in jail, or
  - If the offense was committed when the individual was under 18 and more than five years ago
- Two or more crimes for which the aggregate sentences to confinement were five years or more53

50 For a more detailed discussion of the various grounds under which DHS has authority to detain an individual, see CLINIC, A Guide to Obtaining Release from Immigration Detention (forthcoming 2018), supra note 14.
51 For information about options for seeking release for individuals detained under INA § 241, see CLINIC, A Guide to Obtaining Release from Immigration Detention (forthcoming 2018), supra note 14.
52 Section 236(c) of the INA directs that non-citizens with certain criminal convictions “shall [be] take[n] into custody” when “released” from criminal custody, unless they fall within a narrow exception allowing for release for witness protection purposes.
53 Although INA § 212(a)(2) does not outline two CIMTs, practitioners should be aware that two CIMTs will render the client inadmissible because even if one CIMT fits the petty offense exception, the second one will not.
• An offense relating to a controlled substance, and
• An offense relating to prostitution and commercialized vice.

Additionally, an individual is subject to mandatory detention if he or she is deportable for having been convicted of certain offenses under INA § 237(a)(2), including two CIMTs, a firearms offense, an aggravated felony as defined in INA § 101(a)(43), or an offense relating to a controlled substance other than a single offense for possession of less than 30 grams of marijuana for personal use. Inadmissibility and deportability grounds relating to terrorist activities also prompt mandatory detention.55

The criminal bars to DACA differ from the criminal grounds for mandatory detention, so an individual could have been granted DACA, but be subject to mandatory detention. For example, an individual with two convictions for petty theft for which he or she was sentenced to probation could have been granted DACA. However, if arrested by ICE, the individual would likely be subject to INA § 236(c) mandatory detention. For information about release strategies for individuals detained under these other authorities, please refer to CLINIC’s forthcoming resource entitled “A Guide to Obtaining Release from Immigration Detention.”56

A. Which Agency Makes the Initial Custody Determination?

When ICE ERO first apprehends an individual and chooses to detain him or her, ICE either sets a bond amount or decides that the individual should not be released under any amount – usually indicated on Form I-286, Notice of Custody Determination. Thus ICE has authority in the first instance to set bond for an individual detained under INA § 236(a) or decline to set any bond, even though the individual is statutorily eligible for bond. The regulations at 8 CFR § 236.1(c)(8) state that in the context of bond decisions made by ICE ERO, “the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.”

B. What If ICE Does Not Set a Bond or the ICE Bond Is Too High?

Whether or not ICE sets an initial bond, the IJ then has the authority to make a custody redetermination for those held in detention under INA § 236(a).57 The respondent must request a custody redetermination hearing from the immigration court; the IJ does not have authority to re-determine bond sua sponte.58 An individual can request a custody redetermination orally at a master calendar hearing, in writing, or by telephone at the discretion of the IJ.59

54 Although it is unlikely that DACA recipients have aggravated felony convictions, practitioners should carefully review any fraud offense for the amount of loss to the victim. A fraud offense that had a loss to the victim that exceeded $10,000 could have been regarded as a non-significant misdemeanor or a petty offense CIMT, but may qualify as an aggravated felony under INA § 101(a)(43)(M)(i).

55 Those inadmissible under INA § 212(a)(3)(B) for allegedly engaging in terrorist activities and those deportable under INA § 237(a) (4)(B) for engaging in, likely to engage in, inciting terrorist activity under circumstances indicating an intention to cause death or serious bodily harm, or associating with a terrorist organization while intending endanger the welfare, safety, or security of the United States.

56 See supra note 14.

57 8 CFR §§ 1003.19(a), 236.1(d).


59 8 CFR § 1003.19(b); Immigration Court Practice Manual Ch. 9.3(c); Matter of R-S-H-, 23 I&N Dec. 629, 630 n.7 (BIA 2003); Matter of Valles, 21 I&N Dec. 769 (BIA 1997) (“In bond proceedings, an alien remains free to request a bond redetermination at any time without a formal motion, without a fee, and without regard to filing deadlines, so long as the underlying deportation proceedings are not administratively final. In other words, no bond decision is final as long as the alien remains subject to a bond.”).
C. When Can I Request a Custody Redetermination Hearing?

An individual in immigration detention need not wait until DHS files the Notice to Appear (NTA) or until an initial hearing is scheduled to request a bond hearing with the immigration court. However, the immigration court does not have jurisdiction over a bond request unless and until the individual is in immigration custody. The Immigration Court Practice Manual notes that once a respondent requests a bond hearing, the court “schedules the hearing for the earliest possible date and notifies the alien and the Department of Homeland Security.”

D. What Is the Possible Bond Amount an IJ Can Set?

By statute, the minimum monetary bond that an IJ can set is $1,500. There is no statutory maximum bond amount. The statute also provides that detained individuals may be released on “conditional parole.” While some IJs have historically concluded that they lack authority to grant this type of release, in a class action lawsuit, DHS conceded that IJs do have this authority. When an individual is detained under INA § 236(a), an IJ can set a bond where ICE has held the person without a bond, can lower the bond set by ICE, and can also raise the bond set by ICE. The U.S. Court of Appeals for the Ninth Circuit has ruled that IJs must consider the respondent’s ability to pay in setting bond amounts.

E. Who Has the Burden of Proof?

Over the last several decades, the Board of Immigration Appeals (BIA) has repeatedly stated that it is the respondent’s burden to establish that he or she should be released.

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60 See 8 CFR § 1003.14(a).
62 Immigration Court Practice Manual Ch. 9.3(d) (noting also that “[i]n limited circumstances, an Immigration Judge may rule on a bond redetermination request without holding a hearing”).
63 INA § 236(a)(2)(A).
65 Rivera v. Holder, 307 F.R.D. 539 (W.D. Wash. 2015); see ACLU Immigrants’ Rights Project, Practice Advisory: Immigration Judges’ Authority to Grant Release on Conditional Parole Under INA § 236(a) as an Alternative to Release on a Monetary Bond (Sept. 2015), available at https://www.aclu.org/legal-document/rivera-v-holder-practice-advisory. Due to the district court’s ruling in the Rivera litigation, IJs in Washington must consider conditional parole in making custody redeterminations. Even though this ruling is not binding outside Washington state, practitioners can argue based on the statutory language that all IJs have the authority to grant, and should consider, conditional parole.
67 Hernandez v. Sessions, 872 F.3d 976 (9th Cir. 2017); see also ACLU, Practice Advisory: Bond Hearings and Ability-to-Pay Determinations in the Ninth Circuit Under Hernandez v. Sessions (Dec. 2017), available at www.aclu.org/other/practice-advisory-bond-hearing-and-ability-pay-determinations (includes tips on making these arguments in bond hearings and sample pro se motions). Individuals unable to pay the bond amount set could also consider whether habeas relief in federal district court might be appropriate, arguing that the bond amount must take into account the individual’s ability to pay. See Adam Klasfeld, Haitian Asylum Seeker Freed in Landmark Bond Case, Courthouse News, June 14, 2017, www.courthousenews.com/haitian-asylum-seeker-freed-landmark-bond-case/ (reporting the case of an individual who successfully argued before the U.S. District Court for the Southern District of New York for a lower bond based on arguments that he was unable to pay the initial bond amount set).
F. What Are the Relevant Factors for an IJ Custody Redetermination?

BIA case law affords the IJ “broad discretion” in considering what factors to consider and how to weigh these factors.\(^{69}\) Over the years, the BIA has issued precedential cases on custody redeterminations that outline the relevant factors. The BIA has also issued a greater number of unpublished decisions applying the relevant custody redetermination factors. The relevant custody redetermination factors are that “[t]he respondent does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.”\(^{70}\) Only if the IJ concludes that the respondent does not pose a danger does the IJ reach the question of flight risk.\(^{71}\)

*Matter of Guerra* lists a number of factors that the IJ can consider in making a bond determination, which include:

1. “whether the alien has a fixed address in the United States;
2. the alien’s length of residence in the United States;
3. the alien’s family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future;
4. the alien’s employment history;
5. the alien’s record of appearance in court;
6. the alien’s criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses;
7. the alien’s history of immigration violations;
8. any attempts by the alien to flee prosecution or otherwise escape from authorities; and
9. the alien’s manner of entry into the United States.”\(^{72}\)

G. What Kind of Evidence Can the IJ Consider During a Custody Redetermination Hearing?

An IJ can consider “any information that is available to the IJ or that is presented to him or her by the alien or the Service” in making a bond determination.\(^{73}\) Any evidence that is “probative and specific” can be considered during the bond hearing.\(^{74}\) This can include evidence of pending criminal charges or other criminal records beyond conviction documents, such as criminal complaints.\(^{75}\)

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70 Id. at 38.
72 Matter of Guerra, 24 I&N Dec. at 40.
73 8 CFR § 1003.19(d).
74 Matter of Guerra, 24 I&N Dec. at 40-41 (BIA 2006). Practitioners should object if evidence offered by DHS is not probative or specific, such as in situations where it is unreliable, the source is not stated, or it contains inaccuracies.
75 Id. at 39 (finding it appropriate that the IJ considered a complaint containing “specific and detailed” allegations related to pending drug charges, where it was signed by a Drug Enforcement Agency agent, described the source of the allegation that the respondent was involved in selling drugs, and “set forth the events leading to the respondent’s arrest, including locations, alleged accomplices, and other details”).
H. Where Can I Find Published BIA Cases on Bond?

The Department of Justice Executive Office for Immigration Review posts precedential cases on its website. The “BIA Precedent Chart” organizes the cases by subject matter and includes cases since March 30, 1995. The “Attorney General and BIA Precedent Decisions” includes all decisions in date order since 1958. Practitioners can also request email updates of any published BIA decisions.

I. Where Can I Find Unpublished BIA Cases on Bond?

The Immigration and Refugee Appellate Center (IRAC) issues a monthly index of select unpublished decisions that includes custody redetermination decisions. Legal search engines such as Westlaw also provide some of these decisions. Practitioners may also check the Lexis Nexis Legal Newsroom Immigration Law for unpublished decisions. Practitioners should note that no one source provides all unpublished BIA decisions.

J. How Can I Use Published and Unpublished BIA Decisions?

Practitioners should cite to favorable BIA decisions and distinguish unfavorable BIA precedents when seeking custody redeterminations before the IJ. While unpublished BIA decisions are not binding on the BIA or an IJ, practitioners may still use these as a persuasive tool in making arguments to the IJ and in considering possible relevant factors.

K. May the IJ’s Custody Redetermination BeAppealed?

DHS may appeal an IJ’s custody determination. Similarly, in the event of a bond denial or issuance of a bond that the individual cannot pay, the respondent may appeal to the BIA. A custody redetermination appeal will not stop or slow down the removal proceedings. The individual will remain detained while the BIA considers the appeal unless the individual is able to post the bond that was issued.

L. When Does INA § 236(a) Authority Begin and End?

Detention authority under INA § 236(a) begins when ICE apprehends an individual and ends when there is a final administrative order of removal.

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82 The mechanics of filing an appeal of a bond decision to the BIA are discussed in CLINIC, A Guide to Obtaining Release from Immigration Detention (forthcoming 2018), supra note 14.
83 See 8 CFR § 1241.1 (explaining what constitutes a final order of removal).
VI. SEEKING RELEASE FOR FORMER DACA RECIPIENTS DETAINED PURSUANT TO INA § 236(A)

As discussed above, if an individual is detained under INA § 236(a), there are two principal fora where he or she may seek release from immigration detention:

- An individual can seek release at any time from ICE ERO, and
- An individual may seek release from the IJ by filing a motion for a custody redetermination hearing requesting a lower bond or release on conditional parole.

This section presents potential arguments that practitioners can offer on behalf of former DACA recipients in either forum.

A. Negotiating Release or a Low Initial Bond with ICE ERO

ICE ERO has discretion to detain or release those apprehended under section 236(a). In increasingly rare situations, such as those presenting compelling humanitarian factors, practitioners may be able to negotiate with ICE ERO for release on recognizance or under an alternative to detention (assuming the client has consented to the requested alternative to detention), or to lower the bond amount set. As such, a practitioner’s first advocacy strategy may be to persuade ICE ERO not to detain the client as soon as it becomes apparent that ICE is considering detention. While under the Trump Administration it may be unlikely that the ICE ERO field office would exercise discretion to release an individual from immigration detention or issue a low initial bond, DACA recipients, as a group, present perhaps the most compelling of humanitarian factors. In fact, President Trump himself has recognized this in his public remarks. It may thus be more worthwhile for practitioners to attempt this negotiation with ICE ERO.

For those with expired or terminated DACA, ICE ERO’s first indication of plans to detain an individual may be to send the individual a letter asking him or her to report for an interview at the ICE ERO field office or seek to apprehend the individual at his or her home, place of employment, or school. DACA recipients who receive an appointment letter should immediately confer with counsel and should not attend the interview unrepresented. Once apprehended, ICE ERO will generally make a determination within 48 hours of arrest whether the individual “will be continued in custody or released on bond or recognizance and whether a notice to appear and warrant of arrest . . . will be issued.” For this reason, practitioners should endeavor to negotiate with the deportation officer while the client is being processed. To communicate with ICE ERO personnel about a detained client, the practitioner will need to submit Form G-28 preferably signed by both the client and the representative. Practitioners can contact the local ICE ERO office or talk to local colleagues to learn the best

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84 See 8 CFR § 236.1(c)(8) (noting that the DHS officer “may, in the officer’s discretion, release an alien not described in section 236(c)(1) of the Act . . . provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding”).
85 Practitioners should consider printing President Trump’s remarks recognizing DACA recipients are presenting perhaps the most humanitarian factors of any immigrant group and including these in their request to ICE ERO.
86 8 CFR § 287.3(d).
87 It is wise for practitioners to have an undated, signed G-28 on file for all clients so that they do not face additional hurdles in the event of the client’s detention. In some jurisdictions, practitioners have reported that ICE will accept a Form G-28 for a detained individual signed only by the representative. This was reportedly national ICE policy under the Obama administration. See AILA Infonet, AILA ICE Liaison Committee Meeting Minutes, AILA Doc. No. 14102844 (Apr. 10, 2014), available at www.aila.org/infonet. In areas where the detained client’s signature is not required, it is advisable to write “Detained” in the client’s signature line.
way of submitting Form G-28, including the availability of fax or e-mail options. Once the practitioner has submitted Form G-28, he or she can begin negotiating for a low bond or release on alternative conditions. The practitioner may also request a copy of the client’s NTA or other immigration documents in ICE’s possession; ICE may or may not respond to such a request.

In making a persuasive case to ERO for the client’s release, practitioners may submit a written packet to the deportation officer, describing why the client would not pose a danger or flight risk if released, and including any evidence of positive equities and humanitarian factors weighing in favor of release. Factors in arguing that a client is not dangerous or a flight risk include:

- Lack of prior criminal history or immigration violations
- Family members in the United States with lawful immigration status, with whom the client would live if released
- Community ties, such as religious activities or volunteering
- Length of time in the United States
- Existence of any potential immigration relief
- The client’s ability to pay bond, and
- Any other humanitarian factors, such as the person’s status as the primary caregiver for young children or individuals with health issues and the person’s own medical or mental health conditions.

As the sections above on the DACA eligibility criteria and the common DACA characteristics detail, DACA

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88 A list of ICE ERO offices can be found on the ICE website, at https://www.ice.gov/contact/ero. Local ERO offices often share the list of officers and their contact information with legal orientation programs and AILA liaisons, so practitioners may want to reach out to local LOP or AILA liaison contacts to obtain contact information. If a practitioner is not able to obtain specific officer contact information or a mechanism for submitting the Form G-28 via fax or e-mail, it may be wise to make the trip to ERO in person to submit the Form G-28.

89 If ICE will not turn over documents, the practitioner can, where useful, explain to the IJ during proceedings the efforts he or she has made to move the matter forward by seeking the documents. See also American Immigration Council, Practice Advisory: Dent v. Holder and Strategies for Obtaining Documents from the Government During Removal Proceedings (June 12, 2012), available at https://www.americanimmigrationcouncil.org/practice_advisory/dent-v-holder-and-strategies-obtaining-documents-during-removal-proceedings.

90 In previous administrations, agency memoranda were issued listing non-exclusive factors that could be considered in DHS’s exercise of prosecutorial discretion. While the February 2017 Kelly Memo, supra note 45, laying out broad enforcement priorities states that “all existing conflicting directives, memoranda, or field guidance regarding the enforcement of our immigration laws and priorities for removal are hereby immediately rescinded—to the extent of the conflict,” the prior memoranda identify factors that practitioners could argue remain relevant to the exercise of prosecutorial discretion. Practitioners may want to include a cover letter referencing these memos and linking the facts of the client’s specific case to these factors, along with providing documentation. See, e.g., Memorandum from Jeh Johnson, DHS Sec’y, Policies for the Apprehension, Detention and Removal of Undocumented Immigrants, at 6 (Nov. 20, 2014), available at https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf (citing factors including “extenuating circumstances involving the offense of conviction; extended length of time since the offense of conviction; length of time in the United States; military service; family or community ties in the United States; status as a victim, witness or plaintiff in civil or criminal proceedings; or compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative”); Memorandum from John Morton, ICE Dir., Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens, at 4-5 (June 17, 2011), available at https://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf (listing factors); Memorandum from John Morton, ICE Dir., Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011), available at https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf; Memorandum from Julie L. Myers, Asst’DHS Sec’y, Prosecutorial and Custody Discretion (Nov. 7, 2007), available at https://www.ice.gov/doclib/foia/prosecutorial-discretion/custody-pd.pdf (discussing nursing mothers).
recipients demonstrate a lack of prior significant criminal history, lengthy residence in the United States, and community ties in terms of schooling, employment, or business ownership. Because these factors mirror the custody redetermination factors, these factors will be discussed further below. Regarding the ability to pay bond, many DACA recipients may be better able to pay a low bond because DACA provides access to employment authorization.

B. Requesting a Lower Bond or Conditional Parole from the IJ

If unsuccessful in negotiating for release or a low bond with ICE, an individual detained under INA § 236(a) can turn to the IJ. For information on how to request a bond hearing with the IJ and how to prepare for the bond hearing, including types of documents to submit, please refer to CLINIC’s forthcoming resource, “A Guide to Obtaining Release from Immigration Detention.” As discussed in detail below, a DACA recipient should have strong evidence that he or she merits release on a low bond or conditional parole.

1. Danger to the Community Determinations

DACA recipients should have a strong argument that they do not pose a danger to the community. In order to receive and maintain DACA protection, an individual could not have been convicted of a felony, a “significant misdemeanor,” three non-significant misdemeanors, or pose a threat to national security or public safety. Practitioners can assert that through a grant of DACA, DHS has already considered the individual’s criminal record and determined that the individual is not a danger to the community or a threat to national security. It is possible that a DACA recipient had juvenile adjudications or expunged convictions, which would not have been a bar to receiving DACA. However, DHS would have taken those arrests into consideration in deciding whether to exercise its discretion to grant DACA. Unless there is new evidence of criminal activity since the individual’s DACA protection was last renewed, practitioners should argue that the DACA recipient does not pose a danger, and move on to an analysis of flight risk.

However, the IJ will likely consider the individual’s criminal history, the length of sentence imposed for any conviction, criminal conduct that did not result in an arrest, and the number of arrests (even where the arrest did not lead to a conviction). In cases where the client has a history of arrests, evidence of rehabilitation should be provided to the court to mitigate against a finding of dangerousness. Additionally, practitioners may wish to point to the fact that the state court treated the offense as minor, as evidenced by the classification of the offense and the client’s sentence, that the conduct occurred when the individual was a juvenile or very young adult, or that there were extenuating circumstances which led to the conduct that are no longer present.

DHA may detain DACA recipients before the resolution of a new criminal charge. In this case, practitioners should consider trying to resolve the criminal case before requesting a bond hearing. This will involve coordinating with criminal defense counsel and may require having the client transferred to criminal custody, so that he or she can appear in criminal court. Resolving the criminal charge is especially important where a conviction of the charge would prompt mandatory detention, because an IJ is unlikely to grant bond prior to a favorable resolution. If the charge cannot be resolved, practitioners should focus on the conduct involved and

91 See supra note 14.
argue that the pending charge does not necessarily establish dangerousness. For example, a pending charge for driving without a license or other non-malicious infraction should not be an indicator of dangerousness.

In instances where DACA recipients have minor criminal histories since DACA was last renewed, practitioners should submit evidence of rehabilitation or other mitigating circumstances to argue that the DACA recipient is not a danger. Practitioners may wish to analogize their cases to the unpublished cases of J-S-A-, N-Y-T-H-, or A-B-L-, where the BIA reversed the IJ and found that bond could be granted despite the respondent’s criminal history.

In J-S-A-, the respondent had lived in the United States for 20 years, had significant family ties, had a fixed address and steady employment, and his DACA renewal request was pending. The respondent had a DUI charge that was dismissed and minor traffic violations. In spite of his criminal record, the BIA remanded the case for the IJ to set bond, stating, “we disagree that no bond amount can mitigate [the respondent’s flight risk].” In N-Y-T-H-, the respondent had five citations for driving without a license. The BIA concluded that the driving citations, “without more, are insufficient to demonstrate that the respondent poses a danger to the community.” In A-B-L-, a large quantity of stolen retail merchandise was seized by police at the respondent’s home, but the BIA noted that the respondent had not been charged with any crime in connection with the incident and reminded the IJ that, “[a]s a rule, we accord ‘little weight’ to conduct described in police documents when the conduct is neither prosecuted criminally nor independently corroborated.” The BIA’s reminder on the minimal evidentiary value of police reports should be helpful to DACA clients who were merely arrested, but not charged with a criminal offense.

The BIA also deemed significant the absence of any evidence implicating the respondent in criminal conduct or other misbehavior during the more than three years that he was at liberty after his prior release on bond. Although it will be uncommon for DACA recipients to have been previously released on bond, DACA recipients with prior, disclosed criminal histories may use the same reasoning of time lapse without further criminal conduct or misbehavior since the last incident.

Practitioners will want to distinguish any client’s DUI record from the facts in the 2018 case of Matter of Siniauskas arguing that the bond analysis requires an individualized determination. In Matter of Siniauskas, the BIA reversed the IJ’s grant of bond for a respondent who had three DUI convictions and a fourth DUI arrest.

Some features of Mr. Siniauskas’s case that could be distinguished include:

- There were multiple DUls (three convictions and a fourth arrest)
- Three of the four incidents, including the recent one, involved accidents
- There was a recent DUI arrest, “undercut[ting] [the respondent’s] argument that he has established

97 DACA recipients facing gang allegations based on a local law enforcement agency gang field interview report (or inclusion in a gang database or other informal gang notations in law enforcement records) should consider arguing that these types of reports merit little weight. In fact, gang field interview reports are arguably less reliable than police reports because the former are generally based on a police officer’s observations of an individual that the officer deems to be characteristics associated with the gangs even if these characteristics are not determinative of gang membership or criminal conduct. In contrast, an officer drafts a police reports based on the allegations or observations of third parties or the officer’s own observations of criminal conduct.
99 See id (“This is not a case involving a single conviction for driving under the influence from 10 years ago.”).
rehabilitation and does not pose a danger to the community”

- The respondent did not appear to dispute the veracity of the allegations underlying the pending charge, and

- The factors that the respondent presented as mitigation or to negate dangerousness existed before the recent arrest and had not prevented it.

Any DUI conviction will likely be recent since DUIs are considered “significant misdemeanors” and would have rendered the individual ineligible for DACA. For this reason, practitioners will want to present factors mitigating or negating dangerousness that arose after the recent arrest rather than before the recent arrest, unlike what was done in Matter of Siniauskas. Furthermore, given that the BIA held in Matter of Siniauskas that “it is proper for the Immigration Judge to consider not only the nature of a criminal offense but also the specific circumstances surrounding the alien’s conduct,” practitioners should consider highlighting the client’s emotional state during the DUI arrest and the reason for this emotional state. For example, if the client felt fear and anxiety at becoming undocumented again following President Trump’s election given his campaign vows to end the DACA program. In one study, researchers found that those eligible for DACA were 50 percent less likely to report symptoms of clinical depression. Another study found that undocumented immigrants between the ages of 18 and 25 appear to be most at risk for psychological stress. That fear and anxiety has likely heightened since President Trump’s September 5, 2017 rescission announcement. Furthermore, the increasingly divisive and nativist rhetoric, which has surrounded DACA’s rescission, may independently have adverse effects on mental health.

2. Flight Risk Determinations

Since “[t]he purpose of the bond is to ensure the respondent’s presence at future proceedings,” the IJ may set an amount of bond that varies “according to his assessment of the amount needed to motivate the respondent to appear in light of the considerations deemed relevant to bond determinations.” Based on the factors enumerated in Matter of Guerra, a DACA recipient should also be able to demonstrate that he or she does not pose a risk of flight for the following reasons:

Length of time in the United States: To be eligible for DACA, an individual must have continuously resided in the United States since at least June 15, 2007. Therefore, all DACA recipients have resided in the United States for over ten years.

100 Id. at 209.
105 Matter of Drysdale, 20 I&N Dec. 815, 818 (BIA 1994). Note that the Drysdale case was decided in 1994, before current statutory provisions governing mandatory detention were enacted.
Family members and community ties in the United States: Seventy-two percent of DACA recipients reported having a U.S. citizen spouse, child, or sibling. Five percent reported having started their own business after receiving DACA, 107 16 percent reported purchasing their first home after receiving DACA, and 65 percent reported purchasing their first car since obtaining DACA. 108

Potential immigration relief: Due to the length of time DACA recipients have been in the United States, and the familial relationships they have with U.S. citizens and permanent residents, many DACA recipients may be eligible for relief from removal. 109 Those who were “inspected and admitted or paroled” and have U.S. citizen parents, spouses, or children 21 and over may be eligible for adjustment of status based on a family petition. 110 Those who can show exceptional and extremely unusual hardship to a qualifying family member may be eligible for cancellation of removal. 111 Additional forms of relief including asylum or withholding of removal may be available. 112 DACA recipients should meet with a qualified immigration attorney to assess their eligibility for other forms of relief as soon as possible.

Employment history: Ninety-one percent of DACA recipients who responded to a 2017 national survey reported being employed. 113

Immigration history: Another factor that the IJ considers is the individual’s manner of entry. All DACA recipients had to have arrived in the United States prior to turning 16 years old, and many were brought in as very young children. Therefore, there is diminished culpability for their unlawful entry. 114

Coming out of the shadows: For some DACA recipients, applying for DACA meant providing their information to DHS for the first time. These voluntary disclosures were done despite knowing that DACA was merely temporary protection from removal and that DHS could use the shared information to enforce their removal at some future point. This intentional act to put oneself in harm’s way may be used to argue that former DACA recipients have shown their willingness to cooperate with authorities, which should mitigate against concerns that the individual is a flight risk.

Most DACA recipients will have strong evidence to support a finding that they will appear in court in the future, and are not planning to evade removal. Many of the documents submitted in an individual’s DACA request, such as graduation certificates, proof of enrollment in school, and evidence of continuous residence, will be relevant to the request for bond. Individuals may be able to obtain a copy of their DACA filing from the attorney who prepared it. If important documents are otherwise unavailable, a Freedom of Information Act (FOIA) request can be filed with USCIS. 115 DACA recipients should also be able to obtain letters from family, teachers, employers, and individuals in the community to support their request for release. Additionally, practitioners may decide to have their client testify at the bond hearing and seek supporting testimony from

107 See Tom K. Wong et al., supra note 28.
108 See id.
110 See INA § 245(a).
111 See INA § 240A(b).
112 See INA §§ 208, 241(b)(3)(B).
113 Id.
115 Information about filing a FOIA request is available at https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/uscis-freedom-information-act-and-privacy-act. However, even a request placed on the fastest track will take about 49 days to receive a response, according to current processing times.
family or members of the community. Many DACA holders are proficient in English and can speak passionately about their life in the United States, making a compelling case for release on bond.

In arguing for release, practitioners may analogize to the unpublished BIA decisions of Marcelino Simbron-Sanchez, Salvador Jr. Villareal, Carlos Antonio Taracena-Herrera, and R-R-V- to argue that the individual’s lengthy presence in the United States, family ties, work history, and lack of criminal history should indicate reduced risk of flight. In the case of Marcelino Simbron-Sanchez,116 the IJ had set a bond amount of $20,000. On appeal, the BIA reduced the bond amount to $5,000. The respondent in that case had resided in the United States for nearly 20 years, had two U.S. citizen children, and was eligible to request cancellation of removal. In Salvador Jr. Villareal,117 the IJ denied bond although the respondent had entered the United States as a 2-year-old, had been in the United States for more than 30 years, was married to a U.S. citizen, had 2 U.S. citizen children, and had an approved I-130 petition. The BIA remanded the case to the IJ for the setting of a bond amount, noting the respondent’s ties to the United States. In Carlos Antonio Taracena-Herrera,118 DHS appealed the grant of a $4,000 bond. The respondent in that case had resided in the United States for 20 years. Additionally, Taracena-Herrera was married to a U.S. citizen, owned a home, had a history of paying income taxes, and showed stable work history and community ties. In this case, the BIA dismissed DHS’s appeal. Many DACA recipients may fit into fact patterns similar to those presented in these unpublished BIA cases. Finally, in R-R-V-, in granting the respondent’s request to lower the amount of bond from $25,000 to $10,000, the BIA relied on the facts showing that the respondent had lived in the United States for more than 14 years, that his eldest son was a lawful permanent resident, and that he was potentially eligible for cancellation of removal.119

VII. CONCLUSION

“They are here illegally. They shouldn’t be very worried. I do have a big heart. We’re going to take care of everybody,” said President Trump during an interview following his decision to rescind DACA.120 As the fate of DACA recipients remains unknown, and the use of immigration detention continues to increase, it is imperative that practitioners understand the legal framework governing INA § 236(a) detention and how to use the equities of DACA recipients to argue for release or a low bond from ICE ERO or a low bond or conditional parole from the IJ. Lack of criminal history and positive equities including family ties, work history, and educational attainment should serve to show that former DACA recipients are neither a flight risk nor a danger to the community. In the absence of congressional action or continuing federal judicial intervention to protect DACA recipients, practitioners must thus be ready to prove to IJs during INA § 236(a) custody redetermination hearings that DACA recipients should be released.

The Catholic Legal Immigration Network’s commitment to defending the vulnerable

The Catholic Legal Immigration Network, or CLINIC, advocates for humane and just immigration policy. Its network of nonprofit immigration programs—more than 330 organizations in 47 states and the District of Columbia—is the largest in the nation.

In response to growing anti-immigrant sentiment and to prepare for policy measures that will hurt immigrant families, CLINIC launched the Defending Vulnerable Populations Project. The project’s primary objective is to increase the number of fully accredited representatives and attorneys who are qualified to represent immigrants in immigration court proceedings. To accomplish this, the Defending Vulnerable Populations Project conducts court skills training for both nonprofit agency staff (accredited representatives and attorneys) and pro bono attorneys; develops practice materials to assist legal representatives; advocates against retrogressive policy changes; and expands public awareness on issues faced by vulnerable immigrants.

By increasing access to competent, affordable representation, the project’s initiatives focus on protecting the most vulnerable immigrants—those at immediate risk of deportation.

The DVP Project offers a variety of written resources including timely practice advisories and guides on removal defense tactics, amicus briefs before the BIA and U.S. courts of appeal, pro se materials to empower the immigrant community, and reports. Examples of these include a series of practice advisories specific to DACA recipients, a practice pointer on Matter of Castro-Tum, 27 I&N Dec. 271 (A.G. 2018), a guide on how to obtain a client’s release from immigration detention, amicus briefs on the “serious nonpolitical crime” bar to asylum as it relates to youth and on the definition of a minor for purposes of the asylum one-year filing deadline, an article in Spanish and English on how to get back one’s immigration bond money, and a report entitled “Denied a Day in Court: In Absentia Removals and Families Fleeing Persecution.”

Get free resources to help you defend immigrants at cliniclegal.org/defending-vulnerable-populations!