



# CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

**The Supreme Court Ruling on DACA:  
What the Decision Means and What's Next  
June 22, 2020**

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## Presenters

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## Webinar Agenda

- Background on DACA
- The Supreme Court's decision
  - What we know now
  - What we're waiting to learn
- What's next for Dreamers?
- Advising and protecting clients
- Program considerations, advocacy and resources



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## DACA Background

- Over 800,000 DACA recipients since 2012
- Sept. 5, 2017: Trump administration announces termination of DACA and begins phasing out the program
- Jan. 9, 2018: Nationwide preliminary injunction requires USCIS to resume accepting DACA renewals (but no initial requests or advance parole)
- June 28, 2019: Supreme Court agreed to review three legal challenges to the termination of DACA
- November 12, 2019: Oral arguments before the Court

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## DHS et al., v. Regents of the University of California et al.

- Issues before the Supreme Court:
  - Whether courts have authority to review the administration’s decision to rescind DACA.
  - Whether the decision to rescind DACA was lawful.

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## The Supreme Court Decision

- 5-4 decision vacated the 2017 rescission of DACA
  - Court had jurisdiction to review the termination decision; and
  - DHS decision to rescind DACA was “arbitrary and capricious” in violation of the Administrative Procedures Act (APA) for two reasons:
    - DHS “was required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns.”
    - DHS “failure to consider retaining forbearance or accommodating particular reliance interests was arbitrary and capricious in violation of the APA.”

[https://www.supremecourt.gov/opinions/19pdf/18-587\\_51fl.pdf](https://www.supremecourt.gov/opinions/19pdf/18-587_51fl.pdf)

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### What Does This Mean for Dreamers?

- Current DACA recipients remain protected from deportation and eligible for related benefits
- Renewal requests can continue to be submitted as before.
- Decision allows the original 2012 DACA policy to be reinstated
- Next step is to see how DHS responds to the decision
- Await USCIS guidance regarding first-time DACA requests and advance parole
- The current administration could terminate DACA again in a way that complies with the APA



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### Many Questions Remain...

- Will the administration try to terminate DACA again? If so, when and how?
  - A new DHS memorandum?
  - The notice-and-comment rulemaking process?
- Will USCIS accept first-time DACA applications and advance parole requests? If so, when?



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### Statements from DHS

- Acting Secretary Chad Wolf: "DACA recipients deserve closure and finality surrounding their status here in the U.S. Unfortunately, today's Supreme Court decision fails to provide that certainty. The DACA program was created out of thin air and implemented illegally. The American people deserve to have the Nation's laws faithfully executed as written by their representatives in Congress—not based on the arbitrary decisions of a past Administration. This ruling usurps the clear authority of the Executive Branch to end unlawful programs."
- Acting Deputy Secretary Ken Cuccinelli: "The Supreme Court's decision is an affront to the rule of law and gives Presidents power to extend discretionary policies into future Administrations. No Justice will say that the DACA program is lawful, and that should be enough reason to end it. Justice Clarence Thomas had it right in dissent: 'Such timidity [by SCOTUS] forsakes the Court's duty to apply the law according to neutral principles and the ripple effects of the majority's error will be felt throughout our system of self-government.'"



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## Statement from USCIS

Today's court opinion has no basis in law and merely delays the President's lawful ability to end the illegal Deferred Action for Childhood Arrivals amnesty program. DACA was created through an Executive Branch memorandum after President Obama said repeatedly that it was illegal for him to do so unilaterally and despite the fact that Congress affirmatively rejected the proposal on multiple occasions. The constitutionality of this de facto amnesty program created by the Obama administration has been widely questioned since its inception. The fact remains that under DACA, hundreds of thousands of illegal aliens continue to remain in our country in violation of the laws passed by Congress and to take jobs Americans need now more than ever. Ultimately, DACA is not a long-term solution for anyone, and if Congress wants to provide a permanent solution for these illegal aliens it needs to step in to reform our immigration laws and prove that the cornerstone of our democracy is that presidents cannot legislate with a 'pen and a phone.

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## Tweets from President Trump

- “As President of the United States, I am asking for a legal solution on DACA, not a political one, consistent with the rule of law. The Supreme Court is not willing to give us one, so now we have to start this process all over again.”
- We will be submitting enhanced papers shortly in order to properly fulfil[I] the Supreme Court's ruling & request of yesterday...”

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## How to Advise Flavia

Flavia's DACA and EAD will expire on August 5, 2020 and you just submitted her renewal application last week. You have Fed Ex confirmation that the packet was delivered to the Chicago lockbox on June 19, but you have not yet received receipt notices for the I-821D or I-765. Flavia wants to know whether her renewal request will still be approved.

What about her brother Victor who is ready to renew his DACA but has not yet submitted his application?

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### What to Tell Cesar

Cesar is a 17-year old who just completed his junior year of high school. He never applied for DACA because he was only 14 years old when DHS stopped accepting initial applications in late 2017. His parents brought him to the United States illegally as an infant and he has never left. Can Cesar apply for DACA now?



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### How to Counsel Ryoko

Ryoko has had DACA since 2013 and her current EAD will expire on September 15, 2021. She is married to a U.S. citizen but is not eligible to adjust status under INA 245(a) since she entered without inspection. Ryoko calls and wants to know whether she can now apply for advance parole with the hopes of becoming eligible to adjust status as an immediate relative.



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### Strategies for Advising and Protecting Clients

- Continue to file DACA renewals
  - Screen clients for other more permanent relief
  - Screen clients for exposure to enforcement if/when DACA ends and provide Know Your Rights and family emergency planning
- <https://cliniclegal.org/issues/know-your-rights>



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## Screening Tips

- Screen for both affirmative and defensive relief
- Even if client previously screened, screen again
- Consider filing FOIA requests, FBI background check, and/or criminal records requests
- Screen for exposure to enforcement
- Identify cases for referral

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## Enforcement Issues

- USCIS will not proactively provide info from DACA requests or related benefit requests to ICE & CBP for enforcement purposes, unless the **2011 NTA Guidance** criteria is met (USCIS FAQ #19)
- Individuals with DACA will not be referred to ICE. (USCIS FAQ #19 )
- If DACA recipient’s case is referred to ICE or NTA issued, info related to family members that is contained in DACA request will not be referred to ICE for purposes of immigration enforcement (USCIS FAQ #20)

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## 2011 NTA Guidance

- [www.uscis.gov/NTA](http://www.uscis.gov/NTA)
- Restricts issuance of an NTA or referral to ICE to cases that involve:
  - Statement of Findings substantiating fraud
  - “egregious public safety” cases
  - Non-egregious public safety cases that make an individual inadmissible or removable

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## Program Considerations

- Educate staff/partners/community about the decision and its meaning
- Update your website, phone system, and social media messages
- Identify and contact DACA clients (renewal and possible initial applicants)
- Continue legal screening events to identify possible eligibility for other immigration benefits

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## Program Considerations (cont.)

- Prepare for possible updates of internal program documents to reflect the resumption of initial DACA and advance parole (intake form, client agreements, fee schedule)
- Continue preparing for possible DACA termination in the future

<https://cliniclegal.org/resources/humanitarian-relief/deferred-action-childhood-arrivals/post-scotus-decision-daca-service>

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## CLINIC's Advocacy Response

- Administrative advocacy on DHS response to the decision – immediate reinstatement of 2012 DACA
- Technical support to partners engaged in Congressional advocacy for a permanent legislative solution
- Case-specific assistance for CLINIC affiliates

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## CLINIC DACA Resources

- VIDEO: 2020 SCOTUS Decision on DACA Explained (Explicación de la Decisión SCOTUS 2020 sobre DACA)
- Practice Advisory: Screening DACA Recipients for Other Relief
- DACA Renewals Practice Advisory

<https://cliniclegal.org/issues/deferred-action-childhood-arrivals-daca>



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## CLINIC DACA Resources

- Practice advisories on non-LPR cancellation, asylum, etc.
  - <https://cliniclegal.org/resources/removal-proceedings/practice-advisory-non-lawful-permanent-resident-cancellation-removal>
  - <https://cliniclegal.org/resources/asylum-and-refugee-law/practice-advisory-overcoming-asylum-one-year-filing-deadline-daca>
  - <https://cliniclegal.org/resources/asylum-and-refugee-law/practice-advisory-lgbti-daca-recipients-and-options-relief-under>
  - <https://cliniclegal.org/resources/removal-proceedings/practice-advisory-motions-reopen-daca-recipients-removal-orders>
- Screening tool
  - <https://cliniclegal.org/resources/program-management/screening-tool>



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