

# Immigration Law and Policy and How it Affects Students

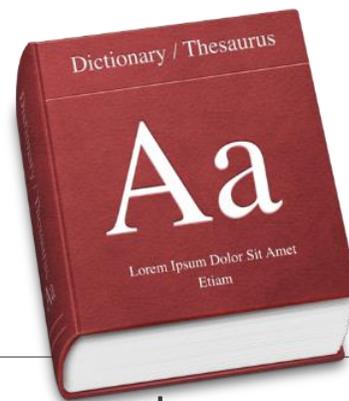
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# Terminology

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**ICE:** Immigration and Customs Enforcement.

**CIS:** Citizenship and Immigration Services

**CBP:** Customs and Border Patrol

**Lawful permanent residency:** green card.

**Immigrant visa:** a visa to immigrate permanently to the United States as a lawful permanent resident

**Nonimmigrant visa:** a temporary visa such as student, visitor, or exchange participant

**DACA:** Deferred Action for Childhood Arrivals.

**Undocumented person:** someone who entered without permission, or whose visa or I-94 has expired.

# Immigration Law Today

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A person is lawfully present in the United States if s/he

- Is a citizen by virtue of having being born in the United States or born abroad to U.S. citizen parent(s)
- Has become a naturalized US citizen
- Is a lawful permanent resident (LPR or “green card” holder)
- Was granted asylum or admitted as a refugee
- Has a valid nonimmigrant visa and unexpired I-94
- Has Temporary Protected Status or some other temporary immigration status
- Was granted a form of deferred action, such as Deferred Action for Childhood Arrivals

# Immigration Law Today

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A person is NOT automatically lawfully present in the United States if s/he

- Is married to a U.S. citizen
- Has U.S. citizen children
- Has a work permit
- Has a social security number

# Immigration Law Today

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A person may only become a lawful permanent resident through certain means

- Sponsorship by an immediate family member (spouse, child over the age of 21, parent, or sibling)
  - NOTE: Many sponsorship-based visas have long wait times due to annual limits on immigration
  - NOTE: Persons who entered the US without permission and have accumulated more than 1 year of unlawful presence must leave the US to apply for lawful permanent residency and face a 10-year bar on returning to the US
- Sponsorship by an employer through a complex labor certification process
- A few temporary visas that lead to permanent resident status (e.g., U visa, T visa)
- Asylum or refugee resettlement
- A few other limited means

# Immigration Law Today

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## **Illegal Immigration Reform and Immigrant Responsibility Act of 1996**

- Has been in effect since 1996 with very few modifications.
- Other laws in effect today have been in place since the 1950s and 1960s.
- The election of President Trump did not change immigration law. Only Congress can change the immigration laws.
- A President can always change enforcement priorities, and President Trump has done that.

# Deferred Action for Childhood Arrivals (DACA)

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In 2012, President Obama created a new executive policy calling for deferred action for certain undocumented young people who came to the U.S. as children.

Individuals who have received DACA can apply for employment authorization and are protected from deportation for two years at a time.

Deferred action is not lawful permanent residence or citizenship. And, it can be revoked at any time.

DACA is NOT a law.

# Eligibility for Deferred Action for Childhood Arrivals (DACA)

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- Were under the age of 31 as of June 15, 2012;
- Came to the United States before reaching your 16th birthday;
- Have continuously resided in the United States since June 15, 2007, up to the present time;
- Were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;
- Had no lawful status on June 15, 2012;
- Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
- Have 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.

# DACA Today

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- Trump administration rescinded DACA on Sep. 5, 2017
- On January 9, 2018, the federal district court for the Northern District of California issued a nationwide preliminary injunction and ordered DHS to continue the DACA program.
- Initial DACA Applications. People who have never had DACA are not able to submit a DACA application. Only those who have had DACA at some point may submit a renewal application.
- DACA Renewal Applications. People who have had DACA in the past may submit a DACA renewal application. There are two different processes depending on when your DACA expired:
  - People whose DACA expired on or after September 5, 2016 can submit a DACA renewal application. Speak with a legal services provider if your DACA is more than six months from expiring since it is unclear what USCIS will do with applications submitted extra early.
  - People whose DACA expired before September 5, 2016 will have to submit their application as if it were the first time. This will include providing evidence that you meet all the DACA eligibility criteria.
- Advance Parole. No new applications for Advance Parole will be accepted.

# DACA's Future

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The administration is likely to appeal the decision to the Ninth Circuit Court of Appeals. Possibly, the appellate court will reverse the ruling or stay the decision of the district court pending its decision. Separately, there are several pending legal challenges to the DACA rescission that may be decided in the coming weeks. If additional courts rule in favor of the plaintiffs and are later appealed, this could lead to a request that the Supreme Court hear the case.

Resources for keeping apprised:

Penn State Law's Center for Immigrants' Rights Clinic <https://pennstatelaw.psu.edu/immigration-after-election#DACA/DAPA>

[Educators for Fair Consideration](http://e4fc.org/resources/whatweknowcandonow.html) <http://e4fc.org/resources/whatweknowcandonow.html>

[Immigrant Legal Resource Center \(ILRC\)](https://www.ilrc.org/daca) <https://www.ilrc.org/daca>

[National Immigration Law Center \(NILC\)](https://www.nilc.org/) <https://www.nilc.org/>

Twitter Thread of Professor Shoba Sivaprasad Wadhia

[https://twitter.com/shobawadhia?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor](https://twitter.com/shobawadhia?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor)

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**Apply Immediately.** If you are eligible, please consider applying immediately. We are uncertain about how long this opportunity to apply for renewals will remain open since the Trump Administration has already filed an appeal to stop the DACA program again. To find help with your DACA renewal application, visit [www.immigrationlawhelp.org](http://www.immigrationlawhelp.org). To get assistance with the application fee, visit [lc4daca.org](http://lc4daca.org).

**#DreamActNow.** While this court decision is a welcome victory, we continue to support efforts by undocumented youth and allies to push for a permanent legislative solution for undocumented youth. Call your member of congress to pass the Dream Act by this Friday January 19th.

**Get screened for other immigration options.** Fill out E4FC's FREE [Dreamer Intake Service](#) to learn more about your potential immigration options. To find a reputable non-profit legal service provider in your area, visit [Immigration Law Help](#).

# Legal basis for the suit to enjoin DACA termination

<https://www.nilc.org/wp-content/uploads/2017/09/Batalla-Vidal-v-Baran-PMC-Letter-2017-09-05.pdf>

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- The government's termination of DACA violates the Administrative Procedure Act (APA) and the Fifth Amendment of the U.S. Constitution.
- Millions of people have benefited from, and relied on, the DACA program over the past five years—not only the nearly 800,000 DACA recipients themselves, who have disclosed sensitive information and structured their lives around the policy, but also their employers, families, classmates, and communities. Particularly given this reliance, the government has failed to provide a reasoned explanation for its reversal, in violation of the APA. The government's inadequately reasoned change in policy violates the APA's prohibition against arbitrary and capricious agency action. 5 U.S.C. § 706(2)(A). When an agency reverses a previously established policy it must “show that there are good reasons for the new policy.”
- The government's reversal is unconstitutionally motivated by anti-Mexican and anti-Latino animus, in violation of equal protection component of the Due Process Clause of the Fifth Amendment. Trump's consistent anti-Mexican statements, from the start of his campaign through his rally last month in Phoenix, demonstrate his intent to discriminate against Mexican and Latino individuals, who will bear the overwhelming burden of the DACA termination.

# ICE will not do enforcement at schools, hospitals, etc. (at least for now)

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For now, ICE is following an earlier policy that says they will NOT conduct enforcement at schools, places of worship, courts, or hospitals (“sensitive locations”)

- That memo is [here](https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf) <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>, and can be found by searching online for “ICE Sensitive Locations Memo.”

# Fate of AB 540 and Other California Laws, in the Words of Gov. Brown

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“California has enacted several protective measures for the undocumented: the Trust Act, lawful driver’s licenses, basic employment rights and non-discriminatory access to higher education. We may be called upon to defend those laws and defend them we will. And let me be clear: we will defend everybody – every man, woman and child – who has come here for a better life and has contributed to the well-being of our state.”

# Gov. Jerry Brown, State of the State Address, Jan. 24, 2017

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”[T]he future is uncertain and dangers abound. Whether it’s the threat to our budget, or to undocumented Californians, or to our efforts to combat climate change – or even more global threats such as a financial meltdown or a nuclear incident or terrorist attack – this is a time which calls out for courage and for perseverance. I promise you both. But let’s remember as well that after the perilous voyage, those who made it to America found boundless opportunity. And so will we....California is not turning back. Not now, not ever.”

# Other Resources for Students and Families

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- Mental Health Emergency Toolkit  
<http://weareheretostay.org/resources/mental-health-emergency-toolkit/>
- Warning about Notario Fraud <https://unitedwedream.org/notario-warning/>
- American Immigration Lawyers Association attorney referral service  
<http://www.aialawyer.com/>

# Contact Information

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Pronouns: she/her/hers

