

# HARVARD IMMIGRATION & REFUGEE CLINIC *of* HARVARD LAW SCHOOL

6 Everett Street ♦ Wasserstein Hall 3106 ♦ Cambridge, Massachusetts 02138

## Frequently asked questions

The responses to the Frequently Asked Questions (FAQs) listed below are informational and do not constitute legal advice. Every case is different, and advice will vary depending on the individual circumstances of each student. If you are a current undocumented or DACAmented Harvard student, whether at the College or in a graduate program, **please contact the [Harvard Immigration and Refugee Clinic \(hirc@law.harvard.edu\)](mailto:hirc@law.harvard.edu) as soon as possible to set up an individual consultation**. We strongly recommend that you **\*do not\* leave the country** without first consulting an immigration expert with the Clinic or otherwise.

### What is DACA?

Deferred Action for Childhood Arrivals or DACA is a program established by former President Obama, by which the Department of Homeland Security determined that it would defer taking action to remove certain undocumented immigrants, commonly known as DREAMers, and grant them renewable term-limited work authorization.

In order to be eligible for DACA, an individual must:

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

DACA does not provide a path to citizenship, but it does provide a right to work authorization and to remain in the United States without being placed in removal proceedings. More information about DACA can be found at: <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>.

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## **What immigration programs can be changed by the President without Congressional approval?**

The President can attempt to change any immigration policy or action related to the prioritization of removing undocumented or otherwise removable immigrants. Additionally, the President can attempt to change the manner in which applications and waivers are processed. This includes, among other programs, Deferred Action for Childhood Arrivals (DACA); the designation of certain countries for purposes of Temporary Protected Status (TPS); the parole-in-place program for spouses, children and parents of active or reserve U.S. military personnel; the I-601(A) provisional waiver program for people with unlawful presence; work permits for spouses of H1-B visa holders; and optional practical training (OPT) for international students. Each of these programs is potentially subject to change through executive action.

## **What happens now that I have to renew my DACA, if the new Administration revokes DACA in the middle of the process of reapplying?**

If DACA is revoked and your renewal application is still pending, the paid application fee would most likely not be returned. Note that beginning December 23, 2016, the DACA renewal fee increased to \$495.

## **I never applied for DACA, but I am eligible. Should I apply now?**

We strongly recommend against initial applications for DACA until we have more information concerning the Administration's position. The new Administration's policy is unclear as yet, and risks for new applicants include losing their application fee (\$495 as of December 23, 2016). Additionally, the information provided on the DACA application could potentially be used by the government to initiate removal proceedings and meet its burden of proving a charge of inadmissibility. Under the program as established and operated by the Obama Administration, even if the application were denied, the applicant's information would not be shared with Immigration and Customs Enforcement unless the case involved a criminal offense, fraud, or a threat to national security or public safety. However, we do not yet know the new Administration's policies, so the safest route for potential applicants is to wait until we do. If you have any questions about your particular case, you are encouraged to speak with the [Harvard Immigration and Refugee Clinic](http://www.harvardimmigrationandrefugeeclinic.org) - [hirc@law.harvard.edu](mailto:hirc@law.harvard.edu).

## **I currently have DACA. Will I still be able to work with my DACA work permit under the new Administration?**

Because DACA was created by executive action rather than by Congress or an agency's notice-and-comment rule-making, most legal experts agree that it can simply be rescinded by the President

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without any further act of legislation or formal federal rulemaking. The Administration could let DACA expire, without allowing for renewal after the current period of work authorization expires, such that work authorization could be valid through the time period listed on the card. The process for revoking currently valid work authorization requires notice to the holder of work authorization and would be bureaucratically challenging to administer. As of now, it is unclear what action, if any, the new Administration will take against DACA recipients. Additionally, there may be other legal options for you to work in the U.S., so, you may wish to speak with the [Harvard Immigration and Refugee Clinic \(hirc@law.harvard.edu\)](mailto:hirc@law.harvard.edu) to determine if you are eligible for some other form of immigration protection.

## **If DACA is eliminated, will I get an immediate deportation notice?**

At this point it is unclear whether or not there will be further enforcement actions against DACA recipients. If DACA is revoked, the new Administration could choose to issue a “Notice to Appear” in removal proceedings for DACA recipients, but it is unclear whether the Administration would take that step. If ICE does initiate removal proceedings, you will be scheduled to appear in court and will have the opportunity to be represented by a lawyer. ICE can enforce removal orders for DACA recipients with prior removal orders, without initiating new removal proceedings. DACA recipients with prior removal orders should contact an attorney to discuss the possibility that their prior removal proceedings may be reopened. If you are a Harvard University student -- college or graduate student -- please contact the Harvard Immigration and Refugee Clinic ([hirc@law.harvard.edu](mailto:hirc@law.harvard.edu)) in order to set up a consultation as soon as possible.

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

Declaring a college campus to be a “sanctuary campus” does not confer any additional legal protection upon the students there. The “sanctuary campus” label is based on the “sanctuary city” concept. The general idea is that the institution, be it a university or city, has a policy of not voluntarily turning over undocumented immigrants to federal immigration officials and will not voluntarily assist with immigration enforcement efforts. Cambridge has designated itself a sanctuary city. While Harvard has declined to declare itself a sanctuary campus, it has longstanding policies that provide similar protections. The University does not voluntarily share information on the immigration status of undocumented community members, and federal officials attempting to enforce immigration laws on campus are required to obtain a judicial warrant or other valid form of legal process that compels Harvard to cooperate with federal law enforcement.

Consistent with the policies of both Cambridge and Boston, Harvard’s Police Department also does not inquire about the immigration status of any Harvard-affiliated persons it encounters. Furthermore, the Harvard Immigration and Refugee Clinic provides confidential legal advice to members of the Harvard community. If you are an undocumented or DACAmented student at Harvard University, please contact the Clinic ([hirc@law.harvard.edu](mailto:hirc@law.harvard.edu)) as soon as possible, in order to set up a free in-person consultation. The University is continuing to develop new resources and policies in response to unfolding circumstances and the concerns of the community.

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## **What kind of safety plan should I come up with?**

1. Have your immigration information in a place that is quickly accessible and let a family member or friend with immigration status know where this information is so he or she can easily access it in case of an emergency.
2. Memorize the phone numbers of a qualified lawyer and of a family member or friend with lawful immigration status whom you can call if picked up by ICE.
3. Know what rights you have and what course of action you will take when speaking to immigration enforcement officials. Under the U.S. Constitution, whether you are undocumented or not, you have, for example, the right to remain silent; you have the right to refuse to open your door to immigration or law enforcement officials who do not have a judicial warrant; you have the right to a lawyer (in immigration proceedings, at your own expense); and you have the right not to sign any document without first speaking with a lawyer.

Here is a tool that can help to organize your

information: <http://michiganimmigrant.org/resources/library/family-emergency-checklist-english>

For further information, see:

<https://www.aclu.org/know-your-rights/what-do-if-youre-stopped-police-immigration-agents-or-fbi>

<http://michiganimmigrant.org/resources/library/preparing-your-family-immigration-enforcement-english>

<http://unitedwedream.org/thank-deportation-defense-card-handy-phone/>

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

Your rights include:

1. You have the right to remain silent.
2. You have the right to refuse to consent to a search of yourself, your car, or your home without a judicial warrant.
3. If you are not under arrest, you have the right to leave. You should do so without incident to avoid potentially violating other laws that can be cause for arrest.
4. You have the right to a lawyer if you are arrested. Ask for one immediately.
5. Regardless of your immigration or citizenship status, you have certain constitutional rights.

For more information, see answer to the question above.

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

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Traveling within 100 miles of the U.S. border may expose individuals to detection, arrest, and detention by Customs and Border Protection (CBP) operating various checkpoints along these routes. It is possible to travel to Puerto Rico, a U.S. territory, with a government-issued ID such as a driver's license, but there are risks to doing so. People may at times be asked to prove their immigration status. If you have any questions about travel plans, please contact the [Harvard Immigration and Refugee Clinic \(hirc@law.harvard.edu\)](mailto:hirc@law.harvard.edu). We strongly urge you **\*not\* to leave the country** without first consulting with the Clinic.

## **What are the 3- and 10-year bars, and how do they apply to me?**

U.S. immigration law provides that certain persons who have been unlawfully present in the United States for a period of time may, if they leave or are removed from the U.S., be barred from reentry for either three or ten years, depending upon the duration of their unlawful presence.

The law provides for exceptions, and so application of these bars will depend upon each individual case. You should consult with the [Harvard Immigration and Refugee Clinic \(hirc@law.harvard.edu\)](mailto:hirc@law.harvard.edu) to determine the potential impact of the 3- and 10-year bars on your eligibility for immigration protection.

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

If you are a DACA/TPS recipient, **we strongly urge you not to leave the country** after January 20, 2017. DACA, TPS for certain countries and advance parole are discretionary programs that may be withdrawn by the new Administration, and you may not be able to gain re-entry. If you have any questions about your particular case, you should speak with the [Harvard Immigration and Refugee Clinic \(hirc@law.harvard.edu\)](mailto:hirc@law.harvard.edu).

## **Does Harvard admit and enroll undocumented students? Are they eligible for financial aid?**

Harvard admits, enrolls, and provides financial aid to students without regard to their citizenship or immigration status. There is no state or federal law that prohibits enrolling undocumented students. While undocumented students typically are not eligible for federal financial aid, students can still receive grants and loans from Harvard or other sources. In addition, under certain circumstances, the University may provide an undocumented student with financial assistance to cover costs like the \$495 DACA application fee. If you have any questions about your particular case, you should speak with the [Harvard Immigration and Refugee Clinic \(hirc@law.harvard.edu\)](mailto:hirc@law.harvard.edu). See below for University and campus police policies regarding immigration enforcement on campus.

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## University and Campus Policies

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

President Faust, University-wide email

11/28/16 <http://www.harvard.edu/president/news/2016/supporting-our-community>

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

## Can immigration officials conduct deportation activities on Harvard’s campus?

Currently the Department of Homeland Security (DHS) has a policy of not taking “enforcement actions” at “sensitive locations,” including colleges and universities. For more information, see <https://www.cbp.gov/border-security/sensitive-locations-faqs>. Enforcement actions covered by this policy include arrests, interviews, searches, and surveillance. Even though DHS has had a policy of refraining from these enforcement actions in sensitive locations under the prior Administration, DHS is not prohibited from obtaining records, serving subpoenas, or conducting compliance and certification visits. Moreover, a new Administration could change the “sensitive locations” policy.

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

Bi-partisan legislation, called the BRIDGE Act, was recently introduced in Congress and would provide protection to DACA recipients. You can call your Congressperson and advocate for passage of the BRIDGE Act. For more information, see:

<https://www.nilc.org/issues/daca/faq-bridge-act/>

<https://www.congress.gov/bill/114th-congress/senate-bill/3542>