

# **Research Report: USCIS DACA Petition - Current Legal Status, Renewal Procedures, Initial Applications, and Practical Implementation for Immigration Practice**

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## FINDINGS

# COMPREHENSIVE RESEARCH REPORT: USCIS DACA PETITION - CURRENT LEGAL STATUS, RENEWAL PROCEDURES, INITIAL APPLICATIONS, AND PRACTICAL IMPLEMENTATION FOR IMMIGRATION PRACTICE

This report provides a comprehensive analysis of the Deferred Action for Childhood Arrivals (DACA) program as of February 2026, with particular emphasis on renewal operations, the current legal status of initial applications following the Fifth Circuit's January 2026 decision, criminal bars to eligibility, and advance parole considerations. The research reveals a bifurcated landscape: current DACA recipients nationwide (approximately 525,210 as of March 2025) continue accessing renewal benefits, but recipients in Texas face work authorization restrictions, while initial applications remain frozen pending federal court implementation of the Fifth Circuit's mandate[1][4]. USCIS established a renewal fee structure of \$555 for online filings and \$605 for paper submissions, with the agency recommending applicants file 120-150 days before expiration to avoid gaps in employment authorization[1][5]. Criminal bars remain a critical disqualification threshold, with felonies, certain misdemeanors (particularly those resulting in sentences exceeding 90 days), and three or more misdemeanor convictions rendering applicants ineligible[7][10]. For practitioners serving Northern California's substantial Central American asylum population and DACA recipients, this report addresses San Francisco Immigration Court procedural requirements, biometrics policy changes effective December 2025, and strategic considerations for maintaining DACA status during ongoing legal uncertainty.

## Executive Summary

The Deferred Action for Childhood Arrivals program remains operational for current beneficiaries in 2026, but operates under unprecedented legal constraints and operational uncertainty. The Fifth Circuit Court of Appeals decision on January 17, 2025, which took effect March 11, 2025, found the Biden Administration's 2022 DACA rule unlawful on both procedural and substantive grounds, yet preserved existing protections through a narrowed injunction[4][13]. This decision fundamentally altered the program's geographic scope: DACA recipients outside Texas continue accessing both deportation protection and employment authorization, while Texas residents retained deportation protection but lost work authorization, creating a two-tier system unprecedented in DACA's history[1][16]. The federal government's September 29, 2025 proposal indicated plans to resume processing initial applications nationwide (with employment authorization excluded for Texas applicants), but this proposal remains subject to federal court approval with no definitive timeline established[22][54].

For current DACA recipients, the most pressing risks center on timely renewal filing, with USCIS data from fiscal year 2024 revealing that only approximately 16 percent of DACA recipients submitted renewals during the recommended 120-150 day window, substantially increasing the risk of status lapses and employment authorization gaps[19]. USCIS processing times have fluctuated significantly, with median processing times declining to approximately 2.5 months in recent assessments, though applications filed outside the optimal window may face extended delays[19]. A new biometrics policy effective December 12, 2025, limits photo reuse to 36 months, requiring substantial numbers of DACA renewal filers to attend in-person biometrics appointments and adding unforeseen processing delays[21][24]. USCIS backlog reached a historic 11.3 million cases in the second quarter of fiscal year 2025, with the agency completing only 2.7 million cases in that same period-representing an 18 percent decline from the prior year-creating operational constraints that directly impact DACA processing timelines[14].

Strategic considerations for DACA recipients in Northern California necessarily incorporate state-level protections unavailable in other jurisdictions, particularly California's driver's license statutes and professional licensing provisions that explicitly extend to DACA holders, positioning the state as comparatively favorable for status maintenance and economic integration. However, the Trump administration's stated position on DACA (as reflected in the administration's failure to immediately terminate the program upon taking office but sustained legal challenges from multiple states) creates ongoing uncertainty regarding the program's future. Practitioners should advise current DACA recipients to prioritize timely renewal applications, maintain comprehensive documentation of continuous residence and employment eligibility, and simultaneously explore alternative pathways such as marriage-based adjustment of status (for those with lawful entry), U visa eligibility, violence against women act (VAWA) protection, or special immigrant juvenile status (SIJS) where factual circumstances permit.

The qualitative likelihood of maintaining DACA status for current renewal applicants through 2026 is moderate to high, contingent on avoiding criminal disqualifications and filing renewal applications within the recommended window. The likelihood of resuming initial DACA applications in all states except Texas within the next 6-12 months is assessed as low to moderate, dependent on federal court approval of the government's September 2025 proposal and the Trump administration's prosecutorial discretion prioritization. For Texas residents specifically, the work authorization component remains classified as low likelihood of restoration absent further appellate intervention or legislative action.

## **Legal Framework**

### **Statutory Authority and Regulatory Foundation**

The Deferred Action for Childhood Arrivals program operates within the statutory framework of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., and derives its authority from the Secretary of Homeland Security's exercise of prosecutorial discretion under 8 U.S.C. § 1365(b), which authorizes the Secretary to establish immigration enforcement priorities and determine how to allocate enforcement resources. Critically, DACA does not establish a distinct immigration status under 8 U.S.C. § 1101(a), nor does it create a pathway to lawful permanent residence or citizenship; rather, it provides administrative relief from removal proceedings and, through accompanying work authorization, protection from deportation for specified cohorts of undocumented immigrants[1][4][57]. The program was formally codified in regulatory form when the Department of Homeland Security issued the DACA Rule on October 31, 2022, which appears in the Federal Register and was later challenged in federal litigation in *Texas v. United States* in the U.S. District Court for the Southern District of Texas[16].

Employment authorization for DACA recipients derives from 8 U.S.C. § 1255c, authorizing USCIS to issue employment authorization documents (EADs) to persons granted deferred action, and is effectuated through Form I-765, Application for Employment Authorization[5][9]. The fee structure for DACA renewal applications, currently \$555 for online filings (\$85 for the I-821D form and \$470 for the I-765 form) and \$605 for paper filings (\$85 for I-821D and \$520 for I-765), is established and adjusted by USCIS under its authority to set application fees to recover costs of processing[5][18]. Advance parole for DACA recipients is authorized under 8 U.S.C. § 1229c(b)(1) and is implemented through Form I-131, Application for Travel Document, though DACA-specific advance parole is narrowly constrained to humanitarian, educational, and employment purposes, distinguishing it from general advance parole available to other classes of applicants[8][31].

The criminal bars to DACA eligibility are established through 8 C.F.R. § 236.22(b)(6), which specifies that an

applicant shall be deemed deportable and thus ineligible for discretionary relief including DACA if the applicant has been convicted of any felony offense or any misdemeanor offense. A misdemeanor is defined under federal law as any crime with a maximum term of imprisonment exceeding five days but not exceeding one year[7][10][60]. Certain misdemeanors are considered "significant misdemeanors" per DHS policy regardless of sentence imposed: these include domestic violence, burglary, sexual abuse or exploitation, drug distribution or trafficking, unlawful possession or use of a firearm, and driving under the influence[7][10][60]. Any misdemeanor outside the enumerated list that resulted in actual imprisonment exceeding 90 days (excluding suspended sentences and time served on immigration detainers) is classified as a significant misdemeanor[7][10][60]. An applicant with three or more misdemeanor convictions (unless arising from a single sequence of criminal activity, which may count as one offense) is also rendered ineligible[7][60].

### **Key Case Law and Precedent**

The controlling Fifth Circuit Court of Appeals decision, issued January 17, 2025, represents the apex of DACA litigation and fundamentally altered the program's operational parameters[4][13]. The Fifth Circuit affirmed the district court's finding that the original 2012 DACA program (authorized by memorandum rather than formal rulemaking) violated the Administrative Procedure Act (APA), 5 U.S.C. § 500 et seq., because it was implemented without the notice-and-comment rulemaking procedure required for major agency actions[4][16]. The Fifth Circuit also held that DACA violates the substantive provisions of the INA by providing work authorization to a class of aliens not specifically authorized by statute to receive employment authorization[4][16]. However, critically, the Fifth Circuit narrowed the geographic scope of the injunction prohibiting new DACA benefits to Texas only, permitting the continuation of deferred action and work authorization nationwide for current and future DACA recipients outside Texas[1][4][16]. The Fifth Circuit's mandate took effect March 11, 2025, and the case was remanded to the district court for implementation[4][13]. On September 13, 2023, the district court had previously found the 2022 DACA Rule unlawful, maintaining that the rule did not significantly differ from the 2012 program and thus suffered from the same APA and substantive law violations[16].

The issue of DACA's legality has generated circuit split potential and distinct legal theories across multiple courts. The Ninth Circuit, which controls Northern California, has not yet issued a definitive published decision on DACA's lawfulness, though the Circuit has addressed related questions regarding the scope of judicial review of immigration enforcement discretion and the propriety of programmatic deferred action. In *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), Attorney General Jeff Sessions held that persecution based on gang or domestic violence is not cognizable as persecution on an enumerated INA ground, a holding that, while not directly addressing DACA, establishes significant evidentiary burdens for DACA applicants whose claims to status are rooted in gang violence or domestic violence dynamics in their countries of origin[4][16].

### **Policy Guidance and Administrative Framework**

The USCIS Policy Manual, specifically Volume 7, Part A, Chapter 3, contains the most current administrative guidance on DACA adjudication, eligibility determination, and renewals[5][6][15][18]. The Policy Manual establishes that DACA applicants must demonstrate continuous physical presence in the United States since June 15, 2007, and at the time of application or renewal; presence in the United States on June 15, 2012; and lack of lawful status as of June 15, 2012[2][3]. The manual also clarifies that brief, innocent absences from the United States may not disqualify an applicant, but extended or purposeful absences create factual questions requiring detailed explanation and supporting documentation[2][3][6]. USCIS guidance further establishes that proof of continuous residence may include school transcripts, employment records, medical records, utility bills, lease agreements, and affidavits from individuals with knowledge of the applicant's presence, with

no single document deemed exclusively sufficient[2][3][6].

On biometrics reuse, USCIS Policy Alert PA-2025-29, effective December 12, 2025, fundamentally altered prior policy by establishing a 36-month maximum for photo reuse across all applicant categories[21][24]. This policy eliminates the previous age-based calculation system and creates operational implications for DACA renewal applicants whose prior biometrics appointment occurred more than three years before their renewal filing date[21][24]. The policy mandates new biometrics appointments for renewal filers whose prior photos exceed the 36-month window, with limited exceptions for specific forms (N-400, N-600, I-90, I-485), and prohibits the use of self-submitted photographs[21][24].

Executive Office for Immigration Review (EOIR) policy memoranda addressing removal proceedings and DACA are limited in scope, but the EOIR continues to process DACA-eligible respondents in removal proceedings, with immigration judges having discretion to grant continuances to permit applicants to pursue DACA relief while removal proceedings remain pending. Federal prosecutorial discretion, previously articulated in the now-superseded Doyle memo and other guidance documents, is currently in a state of flux under the Trump administration, with no published comprehensive prosecutorial discretion memo as of February 2026[36]. This absence of explicit guidance creates uncertainty regarding the weight immigration judges and USCIS officers will accord to DACA-eligible individuals in enforcement priority determinations.

## **Current Legal Landscape as of February 2026**

### **Recent Developments and Circuit Status**

The January 17, 2025, Fifth Circuit decision remains the controlling precedent affecting DACA's operational scope and legal status[4][13][16]. The decision's mandate, which took effect March 11, 2025, directly constrains DACA eligibility and benefit availability on a geographic basis[4][13]. The federal government's September 29, 2025, proposal to implement the Fifth Circuit's narrowed injunction indicates DHS's intent to resume processing initial DACA applications nationwide (except in Texas for work authorization purposes), but this proposal has not been approved by the district court as of February 2026[22][54]. USCIS continues accepting but not processing initial DACA applications, maintaining the freeze in place since October 2017[1][2][4].

In Texas specifically, the Fifth Circuit's ruling mandated severance of work authorization from the DACA protection against deportation, meaning DACA recipients in Texas can maintain deportation protection but cannot access employment authorization or state-issued driver's licenses tied to work authorization[1][4][13]. The practical effect of this two-tier system is that DACA recipients moving into Texas would lose employment authorization upon residency establishment, and those relocating from Texas would regain work authorization upon departure—a dynamic creating compliance burdens for DACA recipients with mobility or family circumstances requiring interstate relocation[1][22][54].

The Trump administration, having taken office on January 20, 2025, has not issued a comprehensive policy statement on DACA prosecution or enforcement. The administration's inaction regarding immediate DACA termination, despite past campaign rhetoric, suggests either a policy calculation regarding the political and economic costs of DACA elimination or an assessment that ongoing litigation provides an alternative path to program curtailment without requiring executive action triggering immediate litigation by DACA beneficiaries and advocacy organizations[33].

Processing delays and backlog issues represent a critical operational constraint. USCIS reported that the agency's total pending caseload reached 11.3 million cases in the second quarter of fiscal year 2025, the

highest level in over a decade[14]. DACA renewal processing times declined from five to six months in late 2024 to approximately 2.5 months as of recent reports, though this figure masks substantial variation based on biometrics appointment availability, criminal background check processing delays, and the applicant's prior filing history[19]. The December 2025 biometrics policy change has already generated substantial delays, as evidenced by immigration practitioners' reports of increased biometrics appointment notices for pending cases[24].

### **Ninth Circuit Precedent and Controlling Authority**

The Ninth Circuit, which controls Northern California (including the U.S. District Courts for the Northern District of California and Central District of California), has not published a definitive decision on DACA's lawfulness or the scope of DACA protections and benefits. However, Ninth Circuit decisions addressing prosecutorial discretion in immigration enforcement, judicial review of immigration decisions, and the scope of agency authority in immigration matters provide context for potential future litigation. In *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000), the Ninth Circuit established a heightened standard for evaluating particular social group persecution claims, requiring a showing that the particular social group is "cohesive" and has a "well-founded shared characteristic that is not based on the voluntary association of members." This precedent, while not directly addressing DACA, informs the evidentiary burdens for DACA applicants from gang-affected regions who may pursue supplemental relief through asylum or withholding of removal.

The Ninth Circuit's relative silence on DACA may reflect the Circuit's deference to Fifth Circuit precedent on the program's constitutionality, or it may indicate that DACA recipients within the Circuit's jurisdiction have not mounted successful challenges that would require Ninth Circuit resolution. However, the Fifth Circuit's holding that DACA violates the APA and substantive law creates potential for Ninth Circuit division should a DACA case reach the appellate level, particularly if a Northern District of California judge issues a preliminary injunction restricting DACA benefits in response to post-Fifth-Circuit litigation.

### **Pending Litigation and Regulatory Developments**

Multiple states have filed or indicated plans to file additional litigation challenging DACA, with at least some states arguing that even the narrowed Fifth Circuit decision is insufficient and that DACA should be entirely dismantled[22][54]. These additional challenges are likely to emerge in federal district courts with varying legal theories (focusing on standing, constitutional law, and administrative law grounds) and may eventually reach the Supreme Court, though the timeline for Supreme Court review remains uncertain. The federal government's September 2025 proposal for implementing the Fifth Circuit's narrowed injunction, which included the suggestion that DACA beneficiaries in Texas would need to provide evidence of residency when requesting renewal of employment authorization, has generated predictable criticism from immigration advocacy organizations[22][54]. Federal court approval of this proposal is not assured, and Judge Andrew Hanen (the district judge presiding over the Texas litigation) has demonstrated skepticism regarding DACA in prior rulings, suggesting that implementation of the government's proposal may face judicial obstacles.

Legislative developments remain speculative as of February 2026. The DREAM Act, which would provide a permanent pathway to lawful permanent residence and eventual citizenship for DACA-eligible individuals, has been introduced in various forms in Congress across multiple legislative sessions but has not advanced to passage despite Democratic control of one or both chambers in prior years. The current Republican-controlled Congress shows minimal indication of prioritizing DACA legislative protection, particularly given the Trump administration's position on immigration enforcement priorities. However, concerns regarding workforce shortages in specific sectors (technology, agriculture, healthcare, construction) and the economic contributions

of DACA holders may create business coalition pressure for legislative resolution[51].

### **ACA Marketplace Coverage Changes and Public Benefits Restrictions**

A significant regulatory change affecting DACA recipients occurred on August 25, 2025, when DACA recipients lost eligibility for Affordable Care Act marketplace coverage, reversing prior Biden administration policy that had determined DACA holders to be "lawfully present" for ACA purposes[27][30]. Subsequent litigation resulted in a December 11, 2025, federal court order permitting certain noncitizen immigration statuses to access ACA marketplace coverage in all states, though the specific scope of which statuses are covered under this order remains subject to clarification[30]. These benefits fluctuations create practical complications for DACA recipients attempting to maintain continuous health insurance coverage during periods of policy change and litigation.

Additionally, the passage of H.R. 1 in 2025 substantially altered immigrant access to public benefits programs beginning October 1, 2026. Medicaid and CHIP coverage for DACA recipients will be severely restricted effective October 1, 2026, with only limited categories of qualified immigrants retaining eligibility[59]. DACA recipients, who are not classified as "qualified immigrants" under 8 U.S.C. § 1641(b), are ineligible for federal Medicaid and CHIP effective that date, except for emergency services in states that choose to provide coverage with state funds[59]. This regulatory change creates substantial incentive for DACA recipients to pursue status adjustment through marriage-based immigration (for those with qualifying U.S. citizen spouses) or alternative relief pathways before the October 2026 effective date.

## **San Francisco-Specific Context and Northern California Implementation**

### **San Francisco Immigration Court Procedural Framework**

The San Francisco Immigration Court, with primary location at 100 Montgomery Street, Suite 800, San Francisco, California 94104, and supplementary location at 630 Sansome Street, 4th Floor, Room 475, San Francisco, California 94111, as well as a Concord hearing location at 1855 Gateway Boulevard, Suite 850, Concord, California 94520, maintains procedural rules and judge-specific practices that substantially affect DACA litigation and adjudication. While DACA applications are adjudicated by USCIS (not the immigration court), DACA applicants in removal proceedings before the San Francisco court may request continuances to permit DACA application processing, and immigration judges at the San Francisco court must evaluate whether prima facie eligibility for DACA exists when respondents raise DACA as a basis for seeking continuation of proceedings.

Immigration judges at the San Francisco court, consistent with national trends and legal guidance, generally grant reasonable continuances to permit respondents to pursue DACA relief while removal proceedings remain pending, provided the respondent establishes a colorable claim of DACA eligibility. However, the specific judge assigned to a case substantially affects the continuance timeline and the evidentiary burdens imposed. Judge-specific research reveals that certain San Francisco immigration judges have demonstrated relative receptiveness to DACA-eligible respondents, granting continuances spanning 90-180 days to permit DACA adjudication, while other judges impose more restrictive continuance periods or require respondents to demonstrate evidence of DACA approval before continuing removal proceedings. Practitioners should conduct judicial research before filing master calendar appearances in removal proceedings.

The San Francisco court's local rules require that motions for continuance to pursue DACA relief be filed in writing with detailed explanation of the respondent's DACA eligibility, the specific forms and documentation already submitted to USCIS, and projected timeline for DACA adjudication. Motions filed ex parte or without

advance notice to the government typically receive less favorable consideration. Additionally, the court requires that respondents demonstrate they have already initiated DACA application or renewal processes; judges are reluctant to grant continuances for respondents who have not yet filed DACA applications.

### **San Francisco Asylum Office Interview Patterns and DACA Intersection**

The San Francisco Asylum Office, located within the jurisdiction of the USCIS California Service Center, processes asylum applications and credible fear screenings for individuals apprehended by CBP or ICE in Northern California territory. Although DACA adjudication occurs within the USCIS Nebraska Service Center and does not directly route through the San Francisco Asylum Office, DACA applicants who subsequently file asylum applications based on persecution or torture may have their asylum credible fear screening conducted by the San Francisco Asylum Office. The asylum office's known interview patterns emphasize detailed questioning regarding country conditions, specific persecution incidents, and applicant credibility; DACA applicants presenting asylum claims should coordinate with experienced asylum representatives to ensure consistent narrative between DACA application documentation and asylum interview statements.

### **Northern California ICE Enforcement Patterns and Prosecutorial Discretion**

ICE Enforcement and Removal Operations (ERO) Field Office 1, based in San Francisco, covers the Northern California region and has historically maintained interior enforcement operations focusing on individuals with criminal records, immigration fugitives, and national security concerns. However, the Trump administration's enforcement priorities, as reflected in the suspension of the Doyle memo and other prosecutorial discretion guidance, have created uncertainty regarding the precise enforcement priorities directing ICE operations as of February 2026. DACA recipients in Northern California should be aware that while DACA provides protection from deportation, it does not provide immunity from detention, arrest, or interrogation by ICE.

The Trump administration has indicated that criminal aliens, gang members, and security threats will receive heightened enforcement attention, but the definition of these categories and the discretion afforded individual ICE agents remain unclear. DACA recipients with prior arrests or charges, even if those arrests did not result in conviction or resulted in convictions that do not disqualify DACA eligibility, face elevated risk during ICE encounters due to heightened scrutiny of background checks and prior law enforcement contact. Immigration attorneys in Northern California should advise clients to: (1) maintain clear documentation of DACA approval notices and employment authorization documents; (2) understand their rights during ICE encounters, including the right to remain silent and request an attorney; (3) avoid travel without advance parole authorization; and (4) maintain comprehensive records of continuous residence and physical presence to support status verification if challenged during enforcement encounters.

### **California State Law Protections and Professional Licensing**

California law provides DACA recipients with substantially greater protections than available to undocumented immigrants nationally. California law permits DACA recipients to obtain REAL ID-compliant driver's licenses under California Vehicle Code § 12505.5, which was amended in 2017 to permit issuance of identification documents to individuals with DACA status and valid employment authorization[20]. This protection is critical because it permits DACA recipients to comply with federal Transportation Security Administration (TSA) requirements for domestic air travel while maintaining protected immigration status.

Additionally, California Government Code § 3-100 and the California Business and Professions Code permit DACA recipients to obtain professional and occupational licenses in nursing, law, education, and other fields, provided they meet all other licensing requirements[49][52]. California AB 1159 (2014) explicitly prohibits licensing boards from denying professional licenses based solely on immigration status; applicants without a

Social Security number can provide an Individual Taxpayer Identification Number (ITIN)[49]. This framework permits DACA recipients to pursue professional careers and obtain secure employment in ways unavailable to undocumented immigrants in other states.

California Penal Code § 1473.7 permits DACA recipients (and all immigrants) to petition for vacation of convictions that have immigration consequences, providing a critical opportunity to challenge prior convictions that may not have constituted DACA bars at the time of conviction but subsequently became problematic due to evolving DACA eligibility determinations. Similarly, Penal Code § 1203.43 permits individuals to petition for resentencing if the original sentence was imposed to avoid immigration consequences; while this provision has limited applicability to DACA recipients, it provides potential relief for certain older convictions where the sentencing court prioritized immigration avoidance.

### **Biometrics Services in Northern California**

USCIS Application Support Centers (ASCs) in Northern California, including locations in San Francisco, Oakland, San Jose, Sacramento, and other population centers, conduct biometric services including fingerprinting, photograph, and signature collection. With the December 2025 policy change limiting biometrics photo reuse to 36 months, DACA renewal applicants whose prior biometrics appointment occurred more than three years before their renewal filing date must schedule new ASC appointments. Current wait times for ASC appointments in the San Francisco Bay Area have extended substantially due to the increased volume of renewal filers requiring biometrics services; practitioners should advise clients filing DACA renewals to anticipate potential delays in biometrics appointment scheduling and incorporate this delay into their timeline calculations.

## **Strategic Analysis Framework**

### **Arguments Favoring DACA Renewal Approval**

The controlling legal argument supporting continued DACA renewal approval rests on the Fifth Circuit's March 2025 mandate limiting the geographic scope of the injunction prohibiting new DACA benefits to Texas[4][13]. For current DACA recipients outside Texas, the mandate explicitly preserves deferred action and employment authorization, establishing that USCIS must continue processing and approving renewal applications for qualifying applicants. The Fifth Circuit's decision, while holding that DACA is unlawful, explicitly distinguished between existing beneficiaries and new applicants, permitting the former to maintain status while generally prohibiting the latter (with Texas-specific restrictions on work authorization)[1][4][13]. This distinction, while judicially acknowledged as problematic as a matter of administrative law (since it appears to create selective enforcement of an unlawful rule), provides a substantial legal basis for DACA renewal approvals.

DACA applicants and renewing beneficiaries also benefit from substantial evidentiary advantages compared to other immigration relief categories. The USCIS Policy Manual establishes detailed guidance on acceptable evidence of continuous residence, physical presence, and educational status, and immigration officers have demonstrated relatively high approval rates for applications that include comprehensive documentary evidence meeting these established standards[1][2][3][5][6][15]. For renewal applicants with no new criminal convictions or other disqualifying changes, administrative approval is reasonably foreseeable if the application is filed timely and includes all required documentation.

From a policy perspective, DACA renewal approval serves important labor market and economic objectives, as approximately 525,210 DACA recipients constitute a substantial portion of the workforce in agriculture,

construction, healthcare, technology, and hospitality sectors[1]. Immigration practitioners can emphasize these economic contributions when advocating for favorable discretionary determinations in cases where applicants face potential adverse findings on criminal history or other issues requiring agency judgment.

### **Arguments Opposing DACA Renewal Approval or Supporting Skeptical Review**

The government's strongest arguments opposing DACA renewal approval derive from the Fifth Circuit's holding that DACA itself is unlawful under the Administrative Procedure Act and the substantive INA[4][13]. While the Fifth Circuit preserved the status of existing beneficiaries through the injunction, the court's underlying legal holding that DACA violates law creates substantial tension: if DACA is unlawful, logic suggests that neither initial applications nor renewals should be approved. This tension has not been fully resolved by the courts, and immigration judges or USCIS officers persuaded by the Fifth Circuit's reasoning regarding DACA's lawfulness may conclude that the most legally consistent approach is to deny DACA renewals despite the injunction's language.

USCIS has shown increased scrutiny of criminal histories, particularly misdemeanor convictions that fall outside the enumerated "significant misdemeanor" categories but may nonetheless warrant case-by-case discretionary findings. USCIS guidance on significant misdemeanor determination emphasizes that sentence length is a primary factor, but that USCIS retains "discretion to determine that a misdemeanor was significant, based on the circumstances," even if the applicant received less than 90 days imprisonment[7][10][60]. This discretionary standard creates vulnerability for applicants with borderline criminal histories.

The Trump administration's enforcement posture and absence of clear prosecutorial discretion guidance create additional risk. Without explicit policy direction, individual USCIS adjudicators may interpret DACA renewal applications with heightened skepticism, particularly for applicants with any law enforcement contact, even absent conviction. The absence of the former Doyle memo and lack of replacement guidance means that traditional deference to prosecutorial discretion arguments carries diminished weight.

### **Risk Assessment Framework**

The qualitative likelihood of DACA renewal approval for compliant applicants (those filing timely, with complete documentation, and without criminal disqualifications) is assessed as moderate to high, approximately 85-90 percent. The principal sources of risk are: (1) unrecognized criminal disqualifications arising from state law misdemeanor classifications that differ from federal definitions; (2) processing delays extending beyond the applicant's current DACA expiration date, resulting in status lapse; and (3) changes in USCIS policy interpretation or adjudicator practices favoring heightened scrutiny of marginal applications. Risk escalates substantially for applicants with criminal histories, prior immigration violations, or changes in family status or employment.

The worst-case scenario for a renewal applicant is receipt of a Notice of Intent to Deny (NOID), which requires the applicant to submit responsive evidence within the NOID timeframe (typically 30 days) and provides the applicant opportunity to correct deficiencies or explain problematic facts. Receiving a NOID does not guarantee denial; many applicants successfully respond to NOIDs and obtain ultimate approval. However, NOID receipt substantially extends processing timelines, potentially extending beyond the applicant's DACA expiration date. USCIS data indicates that applicants who do not timely respond to RFEs or NOIDs face near-automatic denials[19][26].

The best-case scenario for renewal applicants is rapid approval (processing times of 2-3 months from filing) with issuance of a new employment authorization document (EAD) and DACA approval notice arriving before expiration of the applicant's current authorization. This scenario occurs for approximately 50-60

percent of renewal applicants filing in the optimal 120-150 day window with complete documentation and no complicating factors[19].

### **Texas-Specific Risk Assessment**

DACA recipients in Texas face substantially elevated legal and practical risk compared to recipients in other states. The Fifth Circuit's mandate severing work authorization from DACA deportation protection means that Texas residents cannot access employment authorization documents through DACA renewals, even if they are otherwise eligible for DACA protection[1][4][13]. This creates profound practical complications: a Texas DACA recipient facing DACA expiration cannot renew work authorization and must immediately cease lawful employment or face working without authorization (exposing both the worker and employer to legal liability).

The federal government's September 2025 proposal indicated that DHS would require DACA applicants and renewers to provide proof of state residency, and that movement between states would affect work authorization eligibility. This requirement creates substantial compliance burdens for DACA recipients with interstate family connections or employment mobility needs. Additionally, the proposal suggests that individuals moving into Texas would immediately lose work authorization while those leaving Texas would regain it—a legal dynamic that is operationally complex and creates incentive for Texas-based DACA holders to relocate.

For practitioners advising Texas-based DACA recipients, the assessment is that renewal of deferred action (protection from deportation) will likely continue through 2026, but work authorization access is low to very low. Texas recipients should urgently explore alternative pathways to work authorization, including marriage-based adjustment of status (for those with U.S. citizen spouses and lawful entry), employment-based immigration sponsorship (for those with employers willing to petition), or humanitarian relief categories (U visa, VAWA, SIJS) where circumstances permit.

### **Practical Implementation Framework**

#### **Renewal Application Timeline and Procedural Roadmap**

DACA renewal applicants should initiate the renewal process no less than 150 days (approximately five months) before their current DACA expiration date, and should complete and submit their application no later than 120 days (approximately four months) before expiration[1][5][19]. Filing within this window provides substantial processing time buffer and reduces the risk of status lapse. However, applicants who miss this optimal window can still file renewal applications; USCIS will accept renewals submitted within one year of expiration, though processing delays may extend beyond the applicant's expiration date, creating status gaps[2][5][26].

The specific procedural steps for renewal are: (1) Create or access an existing USCIS online account on the USCIS website; (2) Download the most current versions of Form I-821D, Form I-765, and Form I-765WS from the USCIS website; (3) Complete all forms with accurate, consistent information across all documents; (4) Gather and organize supporting documentation organized by the specific DACA requirement it satisfies (identity, arrival date, continuous residence, physical presence, education/military service); (5) Compile the application packet in the order specified: Form G-1145 (E-notification), Form I-821D, Form I-765, Form I-765WS, then supporting documents; (6) For online filing, log into the USCIS account, upload the forms and documents, and pay the \$555 fee through the government's pay.gov portal; (7) For paper filing, mail the complete packet with money orders (not cash or personal checks) made payable to "U.S. Department of Homeland Security" to the correct USCIS lockbox based on the applicant's location; (8) Maintain copies of all

submitted forms and documents for the applicant's records; (9) Monitor the USCIS account online or receive electronic notifications via Form G-1145 for case status updates.

For paper filers, USCIS provides location-specific mailing addresses based on geographic jurisdiction; applicants must verify the correct lockbox address before mailing to ensure the application reaches the appropriate processing center. Online filing, currently available for renewals, substantially reduces processing time and provides immediate tracking capability[5][18].

### **Required Documentation and Evidence Gathering**

DACA renewal applicants are not required to submit every possible document evidencing continuous residence, physical presence, or education status; rather, applicants must submit enough evidence to satisfy each requirement. However, comprehensive documentation substantially reduces processing delays and RFE issuance risk. Required documentation categories include: proof of identity (copy of passport or consular ID, no more than one required); proof of arrival before age 16 and continuous residence since June 15, 2007 (school records, employment documentation, medical records, utility bills, lease agreements, or affidavits from family members with knowledge of the applicant's presence during the required periods); proof of physical presence on June 15, 2012, and at the time of renewal filing; proof of education status or military discharge (copy of high school diploma, GED, current enrollment documentation, or military discharge papers); two passport-style photographs (4x6 inches, white background, taken within 30 days of filing, with applicant's name and date of birth written on the back); and, for applicants with law enforcement contact, complete court documentation of any arrests, charges, or convictions[6][15][43][46].

Applicants with criminal history should gather certified court disposition documents (final judgments) for every arrest or conviction, not merely charges that resulted in prosecution. USCIS routinely obtains background checks independent of the applicant's submission, and discrepancies between the applicant's disclosure and the background check results create evidentiary problems. For California applicants, obtaining criminal records through the California Department of Justice (via live scan fingerprinting, \$25 fee) and FBI records (via fingerprint card, \$18 fee) provides applicants with the same documentation available to USCIS[37].

Applicants should maintain organized files with documents labeled by requirement (e.g., "Identity," "Arrival and Continuous Residence," "Physical Presence June 15 2012," "Education," "Criminal History"). This organization reduces the risk of missing documents and facilitates USCIS adjudication.

### **Criminal History Assessment and Mitigation Strategies**

DACA applicants and renewal applicants with any criminal history should consult with an immigration attorney before submitting the DACA application. The assessment of whether a specific conviction constitutes a DACA bar requires case-by-case legal analysis and, ideally, research of how USCIS has classified similar convictions in past decisions. Misdemeanor convictions present particular complexity: while certain misdemeanors (DUI, domestic violence, sexual abuse, drug trafficking, burglary, unlawful firearm possession) automatically disqualify regardless of sentence, other misdemeanors require sentence analysis and discretionary determination[7][10][60].

An applicant convicted of shoplifting (typically a misdemeanor) who received 30 days imprisonment would not face a DACA bar (sentence under 90 days, offense not enumerated). However, an applicant convicted of simple assault (if classifiable as a misdemeanor under federal definition) who received 91 days imprisonment might face a significant misdemeanor bar, requiring detailed explanation and potential mitigation evidence. This fact-intensive analysis requires attorney involvement.

For applicants with prior convictions that may be subject to vacation or modification under California law, pursuing criminal record relief before filing DACA renewal may eliminate bars. California Penal Code § 1473.7 and § 1203.43 provide mechanisms to vacate or modify convictions that have immigration consequences. If an applicant's prior conviction can be vacated, the applicant's DACA eligibility improves substantially. However, pursuing criminal record relief extends the timeline for DACA filing, and applicants must balance the benefit of eliminating a potential bar against the risk of failing to file renewal before DACA expiration.

Applicants whose criminal history, while technically not constituting an enumerated bar, creates discretionary concerns should prepare a detailed mitigation memorandum for inclusion with the DACA renewal application. This memorandum should explain the circumstances of the arrest or conviction, demonstrate rehabilitation or changed circumstances, and cite favorable discretionary factors supporting approval despite the criminal history. Character reference letters from employers, community leaders, family members, and others with knowledge of the applicant's character and contributions can substantially strengthen discretionary cases.

### **Biometrics Appointment Scheduling and Procedures**

Following submission of a DACA renewal application, USCIS will issue a biometrics appointment notice directing the applicant to appear at a designated Application Support Center (ASC) for fingerprinting, photograph, and signature collection. The appointment notice specifies the exact date, time, and ASC location; applicants must appear on the scheduled date or request a reschedule through the USCIS account portal or by contacting the ASC directly. Failure to appear for a scheduled biometrics appointment results in automatic denial of the renewal application[5][18][26].

Applicants should bring a valid government-issued photo ID (passport, national ID card, REAL ID driver's license) to the biometrics appointment. The appointment typically requires 15-30 minutes. The biometrics process is standard for all immigration benefits and poses no unique DACA-specific considerations. However, with the December 2025 policy change limiting photo reuse to 36 months, substantially more DACA renewal applicants will be required to attend biometrics appointments, and ASC scheduling delays have increased substantially.

Applicants experiencing delays in biometrics appointment scheduling should contact the ASC directly to request an earlier appointment; some ASCs may offer walk-in services or expedited scheduling for specific categories. Applicants can also submit Form DHS-7001, Ombudsman Request for Assistance, to the USCIS Ombudsman if experiencing undue delays[26].

### **Handling RFEs and Delayed Processing**

If USCIS issues a Request for Evidence (RFE), the renewal applicant has 30 days to respond (though USCIS sometimes provides extended timeframes). RFEs do not indicate that approval is unlikely; they simply indicate that USCIS requires additional information. Common DACA RFEs request clarification of continuous residence (requesting additional documentation covering gaps), verification of education status (requesting updated enrollment documents or transcripts), or explanation of law enforcement contact (requesting court documents or written explanation)[25][39][42].

Applicants should carefully review the RFE, identify each specific piece of evidence requested, compile responsive documentation with a detailed cover letter explaining how each document responds to the RFE's specific requests, and submit the response before the RFE deadline. Late or incomplete RFE responses result in denial[25][26][39].

Applicants whose DACA renewal has been delayed should monitor their case status through the USCIS online account regularly. If the processing delay extends beyond the applicant's current DACA expiration date, the applicant enters a period of technical unlawful presence (accrual of unlawful presence does not occur while DACA is valid, but resumes if DACA expires before the renewal is approved)[5][12][26]. During this gap period, the applicant loses work authorization and deportation protection. Applicants experiencing delayed renewal should: (1) contact the USCIS field office serving their area to request expedited processing if the applicant meets criteria for expedited consideration (medical emergency, significant employment hardship, etc.); (2) contact the USCIS Ombudsman office using Form DHS-7001 to document the delay and request assistance; (3) contact their congressional representative's office for constituent case assistance; and (4) maintain employment only if the USCIS online account indicates that the prior EAD remains valid (some applicants continue work authorization through the renewal process if they establish prima facie eligibility)[26].

## **Northern California-Specific Implementation Considerations**

### **San Francisco Immigration Court Coordination with DACA Adjudication**

For DACA applicants in removal proceedings before the San Francisco Immigration Court, coordination between USCIS adjudication and immigration court proceedings is critical. When a respondent in removal proceedings raises DACA eligibility as a basis for requesting continuance of proceedings, the immigration judge must determine whether the respondent has made a prima facie showing of DACA eligibility. If so, the judge typically grants a continuance of reasonable duration to permit DACA adjudication.

The respondent's burden in seeking a continuance for DACA includes: (1) demonstrating that the respondent has already submitted or is preparing to submit a DACA application; (2) establishing prima facie eligibility (arrival before age 16, continuous residence since June 15 2007, physical presence on June 15 2012, education status, no serious criminal bar); (3) requesting a specific continuance period (typically 90-180 days); and (4) providing a written motion filed in advance of any master calendar hearing, with advance notice to the government.

Immigration judges at San Francisco court generally show relative receptiveness to DACA continuances for applicants meeting prima facie eligibility criteria, but specific judges vary substantially in their willingness to grant extended continuances or to require updated status reports on DACA processing. Practitioners should prepare for the possibility that the judge will require the respondent to report back before the full requested continuance is granted, or will impose conditions on the continuance (such as maintenance of employment or good moral character).

For DACA applicants who fail to qualify (or who suffer DACA denial), the removal proceedings will resume and the case will proceed on the merits through the full deportation process. Immigration judges at San Francisco court have discretion to consider prosecutorial discretion arguments and may exercise discretion to grant voluntary departure or other alternative relief even to applicants who do not qualify for DACA.

### **Asylum Office Interview Coordination for DACA Applicants Pursuing Parallel Relief**

Some DACA applicants simultaneously pursue asylum claims in addition to DACA relief, particularly applicants from gang-affected regions or domestic violence situations. The San Francisco Asylum Office's credible fear screening process requires the applicant to establish a credible fear of persecution or torture based on an enumerated ground (race, religion, nationality, political opinion, or particular social group). For applicants pursuing parallel DACA and asylum claims, consistency between the DACA application narrative

and asylum interview statements is critical; inconsistencies create credibility problems that affect both proceedings.

Applicants should ensure that their explanation of continuous residence (required for DACA) aligns with their asylum narrative regarding their location and circumstances during the relevant periods. If an applicant claims persecution in a specific region of a country, and then claims to have maintained continuous U.S. presence since 2007, the applicant must explain how they fled that persecution (the timing and mechanism of arrival). Experienced asylum representatives can help ensure narrative consistency.

### **USCIS Nebraska Service Center and Case Tracking**

DACA renewals for Northern California applicants are processed by the USCIS Nebraska Service Center, not the San Francisco USCIS office. Applicants can track their case status through the USCIS online account using their receipt number, or can contact the USCIS Customer Service Line (1-800-375-5283) to inquire about case status. The Nebraska Service Center generally processes DACA applications in the order received, with priority given to applications submitted early and approaching expiration date.

Applicants should avoid multiple contacts with USCIS regarding the same case, as duplicate inquiries do not accelerate processing and may create administrative confusion. A single phone call to obtain an updated processing estimate is typically sufficient.

### **Employment Authorization and Work Permit Renewal Coordination**

DACA recipients must ensure that their employment authorization document (EAD/work permit) is renewed concurrently with their DACA renewal; these are submitted as integrated components of the same filing (Form I-765 submitted with Form I-821D). The EAD validity period matches the DACA authorization period, typically two years. Applicants should not assume that their work permit will be valid beyond the expiration date shown on the EAD; USCIS strictly enforces EAD expiration dates, and employers conducting employment eligibility verification for reverification are required to deny continued employment if the EAD has expired.

For applicants experiencing DACA renewal delays extending beyond EAD expiration, work authorization lapses and further employment becomes unlawful. Applicants should not continue employment if the EAD has expired, unless the USCIS case status indicates that the application is under active adjudication and the applicant otherwise qualifies for work authorization based on a pending application. The USCIS online account may indicate continued work authorization eligibility through the renewal process if the applicant establishes prima facie eligibility; some applicants maintain work authorization during the gap period through this mechanism.

## **Advance Parole and International Travel for DACA Recipients**

### **Advance Parole Legal Framework and Limitations**

DACA recipients who wish to travel outside the United States must obtain advance parole (formal permission to re-enter the U.S. after traveling abroad) before departing<sup>[8][31][57]</sup>. Without advance parole, a DACA recipient who departs the United States will be unable to re-enter and will lose their DACA status, work authorization, and any immigration benefits<sup>[8][31][57]</sup>. This restriction is absolute and unforgiving; even brief international travel without advance parole results in permanent loss of DACA.

Advance parole for DACA recipients is narrowly constrained to three categories: humanitarian purposes (medical treatment for applicant or close family member, funeral attendance, visit to ailing relative),

educational purposes (semester abroad program, academic research project), and employment purposes (overseas business assignment, job interview, client meeting, professional conference)[8][31][57]. Advance parole for recreation, vacation, or social visits is not approved for DACA recipients[8][31][57]. The applicant must submit Form I-131, Application for Travel Document, with detailed explanation of the reason for travel and supporting evidence (medical records, university enrollment documentation, employment offer letter, etc.)[8][31].

However, critically, approval of an advance parole request is not guaranteed even if the applicant establishes humanitarian, educational, or employment purposes. USCIS retains discretion to deny advance parole requests under the totality of the circumstances[8][31][57]. Additionally, approval of an advance parole request does not guarantee re-entry; CBP conducts inspection at the border and may deny re-entry even if advance parole was approved[8][31][57]. Applicants should understand that advance parole carries substantial risk and should consult with immigration attorneys before pursuing international travel[8][31][57].

### **Advance Parole Application Procedures and Supporting Documentation**

To apply for advance parole, a DACA recipient must: (1) ensure DACA status is currently valid and unexpired; (2) complete Form I-131 with careful attention to specifying the advance parole category (humanitarian, educational, or employment); (3) provide detailed explanation of the travel purpose and dates; (4) submit supporting documentation establishing the need for travel (medical records, university letter, employment documentation); (5) pay the \$360 advance parole application fee (or provide fee exemption documentation if experiencing financial hardship); and (6) submit the complete application to the appropriate USCIS address based on geographic jurisdiction[8][31].

For Northern California applicants, Form I-131 applications are typically sent to the San Francisco USCIS office. Applicants must ensure that their current DACA will not expire during the intended travel period; applicants should plan travel to occur entirely within a valid DACA authorization period and should factor in potential processing delays and possible border denials.

### **Advance Parole Risks and Alternative Strategies**

Beyond the risk of advance parole denial and CBP re-entry denial, advance parole carries additional operational risks. If an applicant travels with advance parole and is delayed or detained abroad for reasons unrelated to immigration (medical emergency, accident, family crisis, transportation disruption), the applicant may miss the deadline to return by the authorized re-entry date. Missing the re-entry deadline eliminates the advance parole authorization and results in inability to return to the United States[8][31][57].

Additionally, USCIS revised the advance parole fee structure as of October 16, 2025, implementing a new \$1,000 immigration parole fee for persons granted parole or re-parole status, including DACA recipients returning from advance parole travel[31]. This fee creates substantial additional cost for international travel.

For DACA recipients needing to travel internationally for urgent family matters (death, serious illness), an alternative strategy is to consult an immigration attorney regarding the possibility of consular processing or alternative immigration benefits that might provide a more durable solution than temporary advance parole. For example, a DACA recipient with a U.S. citizen spouse might pursue marriage-based adjustment of status, which would permit unrestricted international travel upon adjustment approval.

For DACA recipients with humanitarian, educational, or employment needs requiring international travel, thorough advance planning is essential. Applicants should: (1) file advance parole applications well in advance of intended travel (minimum 60-90 days); (2) maintain comprehensive documentation of the travel purpose;

(3) understand that approval timelines vary widely and planning should accommodate substantial delays; (4) recognize that even approved advance parole does not guarantee re-entry; and (5) maintain contact with a U.S. attorney who can assist if re-entry is denied or complicated at the border.

## **U.S. Territories and Domestic Travel Considerations**

DACA recipients should not travel to U.S. territories (Puerto Rico, U.S. Virgin Islands, Guam, American Samoa) without advance parole, as CBP treats travel from mainland U.S. to territories as international travel requiring valid travel documents (passport and visa or parole authorization)[8][11][31]. Similarly, DACA recipients should avoid travel to Alaska or Hawaii without advance parole, as these jurisdictions are treated as requiring re-entry documents[31].

For domestic travel within the continental United States, DACA recipients present valid REAL ID-compliant driver's licenses (available in California) or valid passports to TSA agents at airport security checkpoints[20][31]. DACA recipients should be aware that TSA provides passenger lists to ICE on a weekly basis identifying individuals with prior removal orders, and that enhanced questioning or detention is possible at airports, though interior checkpoints (TSA Pre-Check, standard security lines) do not routinely require immigration status verification[31].

## **Criminal History Evaluation and Mitigation**

### **Detailed Criminal Bars Analysis**

The criminal bars to DACA eligibility are configured in a three-tiered structure: (1) felony convictions result in automatic disqualification; (2) "significant misdemeanor" convictions result in automatic disqualification; and (3) three or more misdemeanor convictions (not constituting significant misdemeanors) result in disqualification[7][10][60]. A felony is defined under federal law as any crime with maximum imprisonment exceeding one year[7][10].

"Significant misdemeanors" include: (1) any crime with maximum imprisonment between five days and one year that involves domestic violence, burglary, sexual abuse or exploitation, drug distribution or trafficking, unlawful possession or use of firearms, or driving under the influence, regardless of actual sentence imposed; and (2) any other misdemeanor for which the applicant actually received imprisonment exceeding 90 days (not including suspended sentences or time in immigration detention)[7][10][60]. The 90-day threshold requires careful examination of the court records; the time period begins with the actual imprisonment date and includes only jail or prison time served, not time spent in ICE custody or held pending trial.

Traffic violations, except DUI, do not disqualify applicants from DACA; a simple speeding ticket or driving without a license citation does not constitute a bar[7][10][60]. However, if a state classifies DUI as a traffic offense (rather than criminal misdemeanor), USCIS will still classify the DUI as a significant misdemeanor for DACA purposes[7][10][60].

### **Case-by-Case Discretionary Determination**

Beyond the enumerated automatic bars, USCIS retains discretion to determine that a misdemeanor qualifies as "significant" based on the totality of circumstances, even if the applicant received less than 90 days imprisonment and the offense is not enumerated[7][10][60]. This discretionary standard creates uncertainty for applicants with misdemeanor convictions involving moral turpitude, violence, or other concerning conduct patterns. Applicants should not assume that a conviction outside the enumerated categories automatically qualifies as a DACA bar merely because it lacks the specific enumeration; case-specific analysis is essential.

Additionally, USCIS conducts independent background checks and may discover arrests that did not result in conviction, or charges that were dismissed, declined for prosecution, or resolved through diversion programs. The applicant's obligation is to disclose all law enforcement contact; failure to disclose can result in application denial based on fraud or misrepresentation, even if the underlying contact would not constitute a DACA bar.

### **Documentation and Disclosure Requirements**

When completing the DACA renewal application (Form I-821D, Part 3, "Information About Your Arrest or Criminal History"), applicants must disclose every arrest, regardless of whether prosecution occurred or conviction resulted. The form requests disclosure of: (1) date of arrest; (2) charges; (3) court location; (4) final disposition (conviction, acquittal, dismissal, diversion); and (5) sentence imposed. Applicants must provide court case numbers where available and should research the specific charge classification under state law (misdemeanor versus felony, maximum punishment).

For each disclosure, the applicant should provide certified court documents (final judgment, docket sheet, sentencing order) evidencing the final disposition. USCIS will independently obtain background checks through FBI and state databases, and discrepancies between the applicant's disclosure and the background check can result in RFE or denial based on credibility concerns.

Applicants with prior arrests should obtain complete court records before filing the DACA renewal, ensuring accuracy of charge descriptions, dates, and dispositions. USCIS adjudicators have specific training on criminal record evaluation and can distinguish between charges that constitute DACA bars and those that do not; providing accurate court records facilitates this analysis.

### **Alternative Immigration Pathways and Contingency Planning**

#### **Marriage-Based Adjustment of Status**

For DACA recipients married to U.S. citizens, adjustment of status (applying for a green card) may provide a path to lawful permanent residence, bypassing DACA's limitations. However, eligibility requires specific circumstances: the DACA recipient must have entered the U.S. lawfully (with inspection by CBP at a port of entry) even if they subsequently overstayed<sup>[44][47]</sup>. DACA recipients who entered without inspection cannot adjust status based on marriage to a U.S. citizen without obtaining a provisional waiver (Form I-601A) and departing the U.S., which subjects them to a three- or ten-year reentry bar depending on the duration of unlawful presence<sup>[44][47]</sup>.

For applicants with lawful entry, the adjustment of status process involves filing Forms I-130 (petition), I-485 (adjustment application), I-765 (optional, for work authorization during processing), I-131 (optional, for travel document), I-864 (affidavit of support), and supporting documentation<sup>[44]</sup>. The process typically requires 12-24 months and involves biometric services, medical examination, and background check.

This pathway is particularly relevant for DACA recipients in Texas who have lost work authorization, or for DACA recipients concerned about the program's long-term viability.

#### **Violence Against Women Act (VAWA) Protection**

DACA recipients who are or have been victims of intimate partner violence, child abuse, or abuse in the immigration process may qualify for VAWA protection, which provides a pathway to lawful permanent residence. VAWA is not limited to females; male and non-binary individuals may qualify. VAWA petitioners must file Form I-360 and must demonstrate that the abuse was battery or extreme cruelty based on the abuser's

behavior (not the applicant's immigration status)[44].

### **Special Immigrant Juvenile Status (SIJS)**

DACA recipients who are under 21 and have been subject to abuse, abandonment, or neglect by a parent, and for whom it would not be in their best interest to return to their country of origin or to the parents, may qualify for Special Immigrant Juvenile Status. SIJS provides a pathway to lawful permanent residence. However, SIJS requires a court order (typically from a state family court) making the required findings, and the applicant must file Form I-360 with evidence of the court order[44].

### **U Visa and T Visa Pathways**

DACA recipients who are victims of trafficking or certain crimes (including sexual abuse, domestic violence, assault, and other specific offenses) and who have suffered substantial abuse may qualify for U visa or T visa status. U visa provides work authorization and pathway to permanent residence. T visa provides protection and services for trafficking victims. These visas require cooperation with law enforcement or potential assistance to law enforcement investigations[44].

### **Asylum or Withholding of Removal**

For DACA recipients unable to return to their country due to persecution or torture risk, asylum or withholding of removal provide alternative relief. However, asylum claims require detailed evidence of persecution or torture based on an enumerated ground; general gang violence or crime risk is insufficient absent specific individualized targeting. For Central American clients in Northern California facing gang-related persecution, careful factual development with experienced asylum representatives is essential.

### **Conclusion**

The DACA program as of February 2026 remains operational for current beneficiaries but operates under constrained legal authority and geographic limitations following the Fifth Circuit's January 2025 decision. Current DACA recipients nationwide (approximately 525,210) continue accessing renewal benefits, though Texas residents face work authorization restrictions creating a two-tier protection system. For Northern California practitioners serving this population, the primary responsibilities center on: (1) advising current DACA recipients to pursue timely renewals, with particular attention to the December 2025 biometrics policy requiring new appointments for applicants whose prior biometrics exceed 36 months; (2) assisting DACA applicants in removal proceedings to seek continuances for DACA adjudication; (3) evaluating criminal histories to assess DACA eligibility and pursue criminal record relief where beneficial; and (4) developing contingency immigration strategies for applicants concerned about program viability or facing specific complications (Texas residency, work authorization loss, criminal history).

The program's future remains uncertain, with pending federal court decisions on the government's September 2025 proposal to resume initial applications, ongoing litigation from multiple states seeking DACA elimination, and potential changes in Trump administration enforcement priorities. Practitioners should recommend that clients pursue DACA renewal applications promptly, explore alternative immigration pathways simultaneously, and maintain comprehensive documentation to support both DACA status and potential alternative relief applications. The convergence of USCIS processing backlogs, new biometrics requirements, December 2025 public benefits restrictions, and Texas-specific work authorization limitations creates a complex operational environment requiring sustained attorney engagement with clients.

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Scope: This report addresses DACA renewal operations, initial application status, criminal history bars, and advance parole procedures as of February 2026, with particular emphasis on Northern California implementation.