



## **Practice Alert: Filing DACA Renewal Applications in the Wake of the January 9, 2018 Federal Court Ruling**

On September 5, 2017, the Trump Administration [rescinded](#) the Deferred Action for Childhood Arrivals (DACA) program. For more information on the rescission of DACA, see AILA's [Practice Alert: Trump Administration Rescinds DACA](#). On September 8, 2017, the University of California [filed a complaint](#) challenging the rescission of the DACA program and asking the court to enjoin the implementation of the rescission. On January 9, 2018, the district court [issued an order](#) directing the government to partially maintain the DACA program. This practice alert summarizes the provisional relief provided by the court.

### **Scope of Provisional Relief**

The court's decision orders DHS to maintain the DACA program on a nationwide basis, under the same terms and conditions that were in effect before the program was rescinded, with the following exceptions:

- ***New Applications***: The court stated that applications from people who have never applied for DACA "need not be processed." However, the court also noted that the decision does not prevent DHS from adjudicating new DACA applications.
- ***Advance Parole***: The court stated that applications for advance parole based on DACA do not have to be continued for the time being. However, the court also noted that the decision does not prevent DHS from adjudicating advance parole applications based on DACA.
- ***Discretion***: The court stated that the government can take steps to ensure that discretion is exercised fairly and on an individualized basis for each renewal application.

Importantly, the court also stated that the decision does not prohibit DHS from taking enforcement action against anyone, including those with DACA, who it determines may pose a risk to national security or public safety or who – in the judgement of DHS – "deserves ... to be removed."

### **Filing Renewal Applications**

The court's decision directs DHS to post "reasonable public notice that it will resume receiving DACA renewal applications" and to specify the process by which it will accept renewal

applications. As of January 10, 2018, USCIS had not yet released any public guidance on the court's decision, although it has noted on at least [two different](#) USCIS webpages that "more information is forthcoming."

Practitioners may want to consider waiting to file renewal DACA applications on behalf of their clients until USCIS has released public guidance on the process. Given that 1) the court directed USCIS to specify and publicize its renewal process, and 2) the fact that the USCIS lockboxes and service centers will be relying on guidance from USCIS Headquarters to process applications it receives, submitting a renewal application before guidance is released may cause confusion and ultimately lead to a delay in processing.

AILA has reached out to USCIS and will provide updates as soon as they are available.

### **Effect on Legislative Efforts to Protect Dreams**

While the decision is good news in the short term, Dreamers need Congress to pass a permanent legislative solution now more than ever. It seems clear that this Administration will appeal the court's decision quickly, and the litigation itself is likely to be lengthy and drawn out. Moreover, the decision only relates to renewal applications, leaving Dreamers who were unable to apply for DACA without recourse. For more information on the need to pass the Dream Act now, see [www.aila.org/dreamers](http://www.aila.org/dreamers).