



**IMMIGRANT  
DEFENSE  
PROJECT**

## **DACA Renewals: Representing Clients with Contacts with the Criminal Legal System**

**In every case you should make sure that your client does not have a criminal conviction that disqualifies him or her from DACA.**

For more information about criminal ineligibility see the [DACA Supplement page of IDP's two-page checklist](#). The [DACA Renewals training video](#) by The Legal Aid Society also provides an overview of the criminal bars. You should screen each case for eligibility based not only on convictions but also considering the risk of denial and referral to ICE for clients with suspected gang

membership, participation in criminal activities, and/or activities that threaten the U.S. DHS guidance specifies that each case will be adjudicated on a case-by-case basis and USCIS may deny applications in discretion, even if all criminal charges were dismissed.

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### **Renewing DACA for clients who remain eligible after an arrest, ticket, or other contact with the criminal legal system:**

If your client has contacts with the criminal legal system that were previously disclosed, you should note the prior disclosure on the renewal application. When possible, advocates should consider submitting g-28s for clients with criminal records to ensure they are notified about Requests for Evidence (“RFE”).

If your client has been convicted of an offense since his or her last USCIS application, include arguments explaining why the client is not criminally barred in addition to the certificate of disposition. In providing information about the criminal case, consider the extent to which you can rely on legal arguments without disclosing underlying factual circumstances that may negatively reflect on your client. In addition, consider gathering any available evidence of positive equities to include with either the initial renewal application or in response to an RFE.

If your client’s conviction was vacated you should consult a crim-imm expert about their eligibility for DACA. DACA guidance does not address “vacated” convictions and state vacatur are not always valid for immigration purposes.

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### **Renewing DACA for clients who have an open criminal case or outstanding ticket or citation:**

In general, USCIS will not approve a DACA renewal for an applicant with an open criminal case. Therefore, if your client must submit an application while his or her criminal case is still

open (or the ticket or citation is still outstanding), you should expect to receive a Request for Evidence (“RFE”) regarding the disposition of the case.

If your client already has a criminal defense attorney you should immediately contact his/her attorney to discuss dispositions that will preserve DACA eligibility. In addition, you should talk to the attorney about timing considerations to ensure you are able to timely reply to an RFE. If your client does not have a criminal defense attorney, consult with an expert or a criminal defense attorney with knowledge of the local practice in the jurisdiction of your client’s case.

In consultation with the defense attorney, you should advise your client of the risk he or she will be targeted for immigration enforcement action as a result of the criminal case.

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### **Advising clients with convictions about their risk for enforcement action in the case of a denial or when their DACA status expires:**

DHS has said that USCIS will follow the existing guidance (commonly known as the “[NTA memo](#)”) when determining whether to proactively provide information to ICE. The NTA memo specifies that people with convictions that make them inadmissible or deportable will be referred to ICE.

Some people eligible for DACA despite their criminal conviction(s) may also be inadmissible or deportable based on the criminal removal grounds. Advocates should discuss both the risks of providing information to USCIS and the benefits of renewing DACA status with clients before submitting an application. Some individuals will conclude that the possibility of having work authorization and deferred action for an additional two years is worth the risk that ICE will have the information provided in the application, others may decide not to renew their status.

It is not possible to say with certainty who will and will not be targeted for enforcement. However, individuals with prior orders of removal and people with contacts with the criminal legal system have historically been at highest risk.

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### **Additional Resources:**

The Immigrant Defense Project provides expert legal advice on the immigration consequences of contact with Criminal and Family Court. To contact an attorney for advice about a DACA renewal for a client after a contact with the criminal legal system:

Fill out our webform at:

<http://bit.ly/IDPwebform>

or

Leave us a message at:

**(212) 725-6422**