



## SPOTLIGHT ARTICLE

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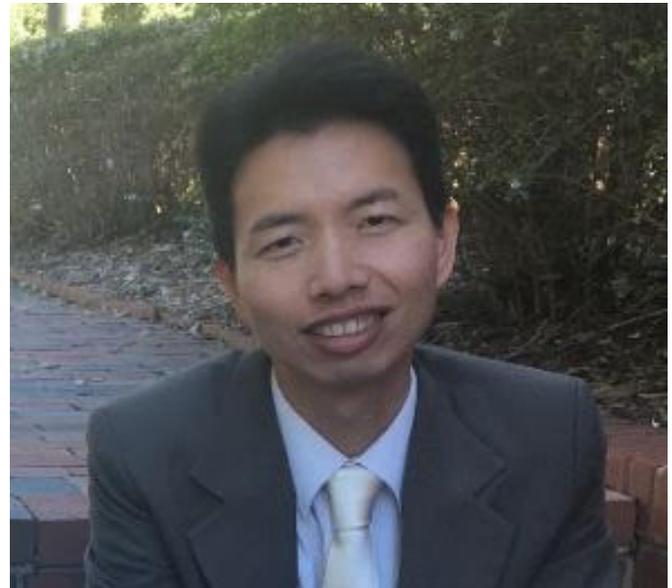
# RECENT DEVELOPMENTS AFFECTING UNDOCU- MENTED STUDENTS

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Recent actions of the federal government have presented an alarming and precarious adversity to undocumented students and their families. Moreover, because debates concerning immigration remain ongoing and contentious, it can be difficult to sort through almost daily developments in coverage from the White House and news media. Within such a context, this article is intended to provide educators and school counselors a summary of the recent developments impacting these students, potential immigration options, and the importance of excising their rights in an increasingly anti-immigrant era. While ESL teachers and administrators need not be experts in this area, the fact remains that many teachers often find themselves interacting closely and personally with immigrant students and families. As unofficial cultural liaisons, of sorts, ESL professionals may find themselves listening to worries, struggles, and confusions from students and their families. Wanting to provide both a listening ear and practical help, this article aims to help ESL profes-



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sionals better understand current legal issues and provide more helpful resources to their students.<sup>1</sup>

## BACKGROUND

An undocumented immigrant is an individual who is not a U.S. citizen and who entered the U.S. either 1) illegally, without being inspected by a U.S.

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<sup>1</sup> For more information and additional resources, please feel free to contact Hoang Lam at [hvlam@ncsu.edu](mailto:hvlam@ncsu.edu)

immigration official; or 2) legally, but then remained past the period of authorized stay (e.g., one who entered the U.S. with a visitor visa but overstayed).

On June 15, 2012, the U.S. government permitted certain undocumented immigrants who came to this country as children to apply for consideration of deferred action for childhood arrivals (DACA) if they met the following criteria:

- had no lawful status on June 15, 2012;
- were under the age of 31 as of June 15, 2012;
- came to the U.S. before their sixteenth birthday;
- have continuously lived in the U.S. since June 15, 2007;
- were physically in the U.S. on June 15, 2012, and also at the time of filing the DACA application;
- are in school, have graduated, or have obtained a certificate of completion from high school; have obtained a general education development (GED) certificate; or are an honorably discharged veteran of the U.S. Coast Guard or Armed Forces; and
- have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

An immigrant receiving DACA will not be deported for the two-year duration of the DACA grant, unless terminated. In addition, a DACA recipient may apply for a work permit (employment authorization document) to work legally. Lastly, a DACA recipient may apply for a travel permit (advance parole) to travel abroad for educational, employment, or humanitarian reasons.

About 800,000 immigrants, many of whom are youths, have received DACA. As a result, many have been able to work and earn money and visit their relatives overseas after many years of separation. The reprieve against deportation and the ability to work under DACA motivated many of them to go to college, as they could pay for the costs of college attend-

ance and see the incentive of using their degrees to earn desirable jobs.

## RECENT CHANGES

On September 5, 2017, the current administration rescinded DACA. The important points of the rescission were as follows:

- New DACA applications would not be accepted as of September 5, 2017;
- DACA recipients would be permitted to keep their benefits until their DACA grants expired, as indicated by the specific dates on their approval notices and work permits;
- Those whose DACA grants would expire before March 5, 2018 were permitted to apply for a two-year renewal, if filed before October 5, 2017.

Under the current administration, all undocumented immigrants are targets for deportation. This policy is a departure from the focus of the previous administration, which prioritized immigrants such as those with criminal records for deportation enforcement. Thus, once an individual's DACA grant expires, he or she faces an increased risk of deportation, in addition to losing the authorization to work.

On January 9, 2018, the U.S. District Court for the Northern District of California ordered the administration to maintain the DACA program throughout the country under the same terms and conditions in effect before the rescission. However, the order instructed that only DACA renewal applications would be required to be processed; new DACA applications would not.

Applicants whose DACA expired on or after September 5, 2016, may still file their DACA renewal application. Applicants whose DACA expired before September 5, 2016, may file a new initial DACA application, because renewal applications typically must be submitted within one year of the expiration

date. Similarly, applicants whose DACA was terminated may file a new initial DACA application.

Currently, under both the administration's rescission decision and the U.S. District Court's order, travel permits will no longer be issued to those with DACA. A DACA recipient with a valid travel permit may leave the U.S. and return within the dates provided in the permit. However, such a travel permit holder is not guaranteed permission for re-entry by U.S. immigration officials at a port of entry and should thus consult with an immigration attorney before traveling overseas.

After October 5, 2017, many applicants who timely filed for DACA renewal nevertheless received rejection notices from the immigration agency, U.S. Citizenship and Immigration Services (USCIS), because of the U.S. Postal Service's (USPS's) delayed delivery of the renewal applications. USCIS indicated that it had been working with USPS to identify affected renewal applicants and would issue letters in December 2017 inviting them to reapply. These applicants would have thirty-three calendar days to reapply.

Since the October 5, 2017 deadline, USCIS has also improperly rejected other DACA renewal applications, in violation of its own standard operation procedure on rejection criteria. For example, USCIS has returned renewal applications in which certain fields—other than name, address, and date of birth—were inadvertently left blank. Although the subsequent U.S. District Court order might make the issue of missing the October 5, 2017 deadline moot, DACA renewal applicants should seek an immigration attorney for assistance in requesting USCIS to accept these improperly rejected applications, in case the administration succeeds in challenging the order and does not process those renewal applications filed pursuant to the U.S. District Court order.

USCIS instructions for the DACA renewal application advise applicants to file for renewal 150 to 120 days before the expiration of their current DACA grant. The instructions further state that USCIS may reject a renewal application that is filed more than

150 days before the expiration. Before the administration announced the rescission of DACA, USCIS accepted early-filed renewal applications. When filing a DACA renewal application early under the U.S. District Court decision, possible outcomes include:

- the application could be rejected;
- the application could be accepted, but its adjudication could be delayed;
- the appellate court could issue an adverse decision, causing the application to be denied and the loss of the filing fee of \$495;
- the appellate court could issue a decision that grandfathers applications already filed under the U.S. District Court's decision; or
- the application could be approved before the application could be approved before an appellate court's decision.

Recently, the current administration also announced the termination of the designation of several countries for Temporary Protected Status (TPS). Under the law, the Department of Homeland Security may extend TPS protection to citizens of a country if that country experiences war, natural disaster, or other extraordinary conditions that prevent its citizens from returning safely. A TPS holder is protected from deportation from the U.S. and may obtain a work permit and travel permit. Individuals from the following countries who are adversely affected by the TPS termination include:

- 5,300 from Nicaragua, with TPS ending on January 5, 2019;
- 58,700 from Haiti, with TPS ending on July 22, 2019;
- 200,000 from El Salvador, with TPS ending on September 9, 2019.

TPS for citizens of Honduras is extended through July 5, 2018, by which time the administration will decide whether to end TPS for nearly

60,000 Hondurans in the U.S. Before a person's TPS ends, he or she needs to have a different immigration status or leave the U.S. If the individual remains in the U.S. without any lawful immigration status, he or she may be deported.

## SUGGESTED ACTIONS

Undocumented immigrants should explore possible immigration options with their attorneys, as they may be eligible for lawful statuses, including:

1. Legal permanent residency (LPR) through U.S. citizen or LPR relative;
2. LPR status from being the victim of battery or extreme cruelty by a U.S. citizen or LPR spouse or parent;
3. LPR status from being an unmarried person under the age of 21 and determined by a state court to have been abused, neglected, or abandoned;
4. LPR status for having been in the U.S. for at least ten years, having good moral character during such time and not having been convicted of certain offenses, and showing that the immigrant's deportation would cause exceptional and extremely unusual hardship to a spouse, parent, or child who is a U.S. citizen or LPR;
5. An immigrant visa for being a beneficiary of an approved immigrant petition who can demonstrate that denial of entry into the U.S. would present extreme hardship to a U.S. citizen or LPR spouse or parent;
6. A visa for being a victim of trafficking or certain serious crimes in the U.S., which allows the victim to later apply for the LPR status; or
7. Asylum based on past or future persecution in his or her country because of race, religion, nationality, political opinion, and membership in a particular social group

Finally, undocumented immigrants must know that they have legal rights in this country, such as the

right to remain silent and the right against unlawful search and arrest. They should invoke these rights at any encounter with local and state law enforcement officials and immigration officers. They do not have to disclose information about their countries of birth or citizenship and the manner of their entries into the U.S. They do not have to consent to the search of their person, belongings, or home, unless an officer presents a valid search warrant.

## CONCLUSION

Considering the current legal developments related to immigration enforcement, teachers, school counselors, and ESL professionals can help undocumented students and their families in several ways. Students should be encouraged to consult with immigration attorneys to investigate possible immigration options for them.<sup>2</sup>

Undocumented students should avoid encounters with local, state and immigration officials as much as possible. They should be familiarized with "know your rights" materials provided online or through workshops by immigrant rights organizations. Furthermore, they should keep all important documents in one place and inform family members about the location of those documents, so that if the students are detained by immigration agents, the family members may have access to the documents for use in challenging detention and deportation.

Lastly, students should be encouraged to pursue higher education, despite the uncertainty concerning their eligibility for work authorization in the future. Because these youths are not eligible for federal financial aid, such as grants, student loans, and work study program, educators can share with them information about scholarships, including those for undocumented students.

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<sup>2</sup> Free or low-cost legal assistance can be found at <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>

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