



# DACA & Advance Parole

Hosted by American Immigration Council  
(AIC) and Catholic Legal Immigration  
Network, Inc. (CLINIC)

May 20, 2014



# Partners

The Own the Dream Campaign is led by a partnership of the United We Dream Network, National Immigration Law Center, the PICO National Network, and America's Voice Education Fund.



# Presenters

---

- Dan Berger, Partner, Curran & Berger LLP
- Tatyana Delgado, Training and Legal Support Attorney, CLINIC
- Ilissa Mira, Training and Legal Support Attorney, CLINIC
- Patrick Taurel, DACA Legal Services Fellow, AIC

# Topics to Cover

---

- DACA & Advance Parole Eligibility Guidelines
- Applying for Advance Parole
- Advance Parole Experiences
- Legal Issues to Consider before Leaving U.S.
- Advance Parole & Family-Based Immigration
- Fact Patterns

# Deferred Action for Childhood Arrivals (DACA)

---

- On June 15, 2012, DHS announced deferred action eligibility guidelines for certain undocumented individuals who entered the U.S. as children.
- Discretionary decision to defer removal action against an individual. Not a lawful status.
- DACA granted for a renewable 2 year period
- Benefits:
  - EAD; SSN; driver's license in most states
  - Unlawful presence is not accrued while in deferred action
  - **May apply for advance parole**

# DACA Eligibility Guidelines

---

- Under age 31 on June 15, 2012;
- Came to U.S. before turning 16;
- Continuous residence from 06/15/07 until present;
- Physically present on 06/15/12 and at time of DACA request;
- Not in lawful status on 06/15/12;
- Education or military service requirement;
- Must be 15 to request DACA, unless in removal proceedings, subject to final order of removal or voluntary departure order; and
- Have not been convicted of a felony, a significant misdemeanor, three or more other misdemeanors, or otherwise pose a threat to national security or public safety.

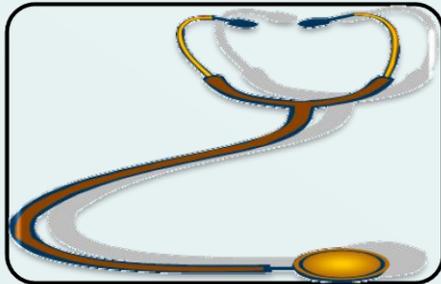
# What is Advance Parole?

---

- Parole = authorization to allow a foreign national to enter the U.S. temporarily for urgent humanitarian reasons or significant public benefit.
  - Legal authority: INA § 212(d)(5); 8 CFR § 212.5
- Advance parole = advance authorization to enter the U.S. after temporary travel abroad
- Parole is not considered “admission”
- Parole by itself does not convey any benefits

# Who is Eligible for Advance Parole?

- Granted DACA prior to requesting advance parole
- Qualified purpose for travel



## Humanitarian

- medical assistance
- funeral service
- sick relative



## Educational

- study abroad
- academic research



## Employment

- overseas assignments
- conferences
- interviews
- trainings

# Applying for Advance Parole

---

- Application for Travel Document (USCIS Form I-131)
- Copy of DACA approval notice from USCIS or approval notice/letter from ICE
- \$360 filing fee
- Supporting Evidence of Reason for Travel

# Sample Advance Parole Approvals

## Humanitarian

Visiting ill relatives. Included medical records documenting condition and birth certificates to prove relationship.

Participation in religious missions. Included letter describing membership in church and describing the event.

## Education

Summer study abroad program related to college course. Included course registration; syllabus; letter from teacher.

Student athlete travelled to participate in sporting events. Records showing enrollment, team membership, game schedule

## Employment

Participated at a conference as a speaker. Provided invitation to speak; resume.

Work-related function abroad. Employer wrote letter explaining the need to have employee travel.

# What about travel logistics?

Form I-512L authorizes an immigration inspector to parole the individual into the U.S.



Department of Homeland Security  
U.S. Citizenship and Immigration Services

## I-512L, Authorization for Parole of an Alien Into the United States

(Family Name) (Given Name) (Middle Initial) Date Issued  
May 24, 2013

A#

Date of Birth (month, day, year) (Country of Birth (City or Town))

U.S. Address (Apt number and/or in care of) (Street number and name) (City) (State or Province) (Zip/Postal Code)

**TRAVEL AUTHORIZATION:** Presentation of the original of this document authorizes a transportation line to accept the named bearer on board for travel to the United States without liability under section 273 of the Immigration and Nationality Act (INA) for bringing an alien who does not have a visa.

**PAROLE:** The named bearer of this authorization is an individual whose removal has been deferred under the Secretary of Homeland Security's June 15, 2012, memorandum authorizing Deferred Action for Childhood Arrivals (DACA). The named bearer departed the United States temporarily and intends to return to the United States. Presentation of the original of this document prior to June 28, 2013 allows a Customs and Border Protection (CBP) Inspector at a port-of-entry to parole the named bearer, whose photograph appears on this authorization, into the United States based on the parole authority contained in INA 212(d)(5)(A). This authorization is valid for one request for parole during the validity period noted above. Each parole period shall not exceed one year from the date of parole at the port-of-entry.

# Travel Logistics

---

- DACA Recipient MUST apply for advance parole
- Recipient MUST return to the U.S. prior to date on I-512L
- May request multiple trips in one advance parole application

## Lessons learned:

- Consider travel contingencies when estimating trip length
  - Estimated return/departure dates are the dates granted
- Request advance parole when client is prepared to travel

# Applying for Advance Parole

---

- Mail to USCIS Chicago Lockbox
- Typical processing time 3 – 5 weeks
- Expedite requests
  - No formal guidance, send to USCIS Chicago
  - Check with local USCIS office

# Travel Experiences (anecdotal)

---

DACA recipient traveled abroad to visit mother who has cancer. She had no problems at time of entry. The officers were polite and paroled her in to the U.S.

# Travel Experiences (anecdotal)

---

DACA recipient traveled to Mexico to visit sick grandmother. At border in El Paso, TX, she showed her EAD, DACA approval notice, I-512L approval notice. DACA recipient was paroled in to the U.S. CBP officer stamped and marked I-94 “for adjustment of status”.

# Legal Issues to Consider Prior to Travel Abroad

- **Prior orders of removal, deportation or exclusion**

- Motion to Reopen

- Administrative closure: Case is placed on 'bookshelf'.



- Termination: Case is concluded.



- Unlawful presence bars

- *Matter of Arrabally & Yerrabelly*, 25 I&N Dec. 771 (BIA 2012)

- Other inadmissibility grounds

# Leaving the U.S.

---

*Matter of Arrabally & Yerrabelly*, 25 I&N Dec. 771  
(BIA 2012)

Board of Immigration Appeals (BIA) held that an individual who leaves the U.S. under advance parole has not made a “departure” for purposes of triggering the 10-year bar for unlawful presence under INA § 212(a)(9)(B)(i)(II).

# Impact on Family-Based Petitions

---

DACA recipients => immediate relatives + paroled into the U.S.

- Satisfy the requirements under 245(a) for AOS
- DACA recipient does not trigger unlawful presence bars because leaving the U.S. under advance parole is not considered a “departure” under *Matter of Arrabally*.
- May apply for AOS without seeking an unlawful presence waiver

# Advance Parole & Adjustment of Status

---

## **-Case Example A:**

EWI client married to US citizen was in removal proceeding. Received DACA. Removal proceedings admin closed. Received AP to visit sick grandparent in Mexico. Client was paroled into the U.S.

Filed AOS with USCIS. Attorney did not file a waiver for unlawful presence. Attorney filed a legal memo citing Matter of Arrabally. USCIS agreed. Case approved.

# Advance Parole & Adjustment of Status

---

**-Case Example B:** DACA Recipient. Immediate Relative Petition. No problems at border when returning on advance parole. Attorney filed highlighted copy of Matter of Arrabally and Parole-in-Place Memo with AOS application. AOS approved (Sacramento, CA field office).

**-Case Example C:** DACA Recipients. Immediate Relative Petitions. No issues at border when returning on advance parole. At Houston, TX field Office, officers sought review from supervisor for AOS applications. AOS Approved.

# Advance Parole & Consular Processing

---

DACA recipients => Preference Category Beneficiaries

- Not eligible to adjust under 245(a), because subject to limitations in 245(c)

- 245 (c)(2) precludes adjustment eligibility for those who have been out of status in the past or worked without authorization.

# Advance Parole & Consular Processing

---

DACA recipients => Preference Category Beneficiaries

- May apply for advance parole for the purpose of consular processing
- Department of State has not issued formal written guidance on the application of *Matter of Arrabally* to DACA recipients

# Advance Parole & Consular Processing

---

## Case Example A:

Grandfather's death + consular processing = approved for advance parole. Attended consular interview in Ecuador. Immigrant visa granted. Entered on Immigrant Visa.

Client had not accrued unlawful presence (under 18 pre-DACA), so no waiver issue.

# Advance Parole & Consular Processing

---

## Case Example B:

Applied for advance parole for purpose of consular processing = approved.

DACA recipient is derivative beneficiary of 2A petition. Principal beneficiary is mother.

At consular interview, mother and DACA recipient asked to apply for unlawful presence waiver.

DACA recipient returned to U.S. with AP. Attorney plans to file for waivers.

# Hypothetical #1: Maria

---

## Facts

- EWI at age 3.
- Now 25 years old.
- No departures.
- No criminal history or contact with ICE.
- Has DACA.
- Would like advance parole to visit sick father.

Question #1: Is Maria a good candidate for AP?

Question #2: What evidence goes in her AP request?

Question #3: What steps would you take to get her AP adjudicated ASAP?

# Maria, continued

---

## Facts

- Maria returned with advance parole.
- Married USC.
- Want to know Maria's options.

Questions: Is Maria eligible for a green card? Why does it matter that Maria last entered the United States with AP?

# Hypothetical #2: Marco

---

## Facts

- College senior.
- DACA.
- 5 week fellowship abroad.
- Filed for AP on his own. Submitted fellowship acceptance letter.
- RFE.

Question: What should Marco submit in response to the RFE?

# Hypothetical #3: Lian

---

## Facts

- Age 2: Lian entered U.S. on tourist visa. Overstayed.
- Age 10: Voluntary departure order. Did not depart.
- Age 19: Lian requested & received DACA.
- Lian on college soccer team.
  - Game in Sweden in 1 month; game in Canada in 2 months. Lian wants to go.

Question #1: Can Lian travel abroad? Impact of failure to depart after VD?

Question #2: How should Lian structure AP request to best suit travel needs?

# Hypothetical #4: Pascal

---

## Facts

- 2007 DUI.
- Requested DACA in proceedings. Presented “exceptional circumstances”
  - Daughter in ER.
  - PG; paid fine.
- DACA approved; case admin closed.
- Wants to visit sick father.

Question: How do you analyze the risk of traveling with DUI?

# Hypothetical #5: Susanna

---

## Facts

- In 2008, arrested with controlled substance.
- PG to misdemeanor simple possession.
- Sentence: 60 days in jail, 50 suspended; Fine; 1 year unsupervised probation.
- Completed her sentence. No contact with the police since.
- In 2012, received DACA.
- Needs to travel to attend grandfather's funeral.

Question #1: Risk of traveling given Susanna's drug conviction?

Question #2: Based on what we know, will Susanna be able to renew her DACA?

# Hypothetical #6: Daisy

---

## Facts

- Daisy has DACA.
- Got AP for work conference.
- 2 flight cancellations. Daisy won't make it back by expiration date on I-512L.
- Calls you panicked.

Question #1: How would you help Daisy return?

Question #2: How do practitioners avoid this?

# Questions?



CATHOLIC LEGAL  
IMMIGRATION  
NETWORK, INC.

[www.cliniclegal.org](http://www.cliniclegal.org)

## **Training & Legal Support Attorneys**

**Tatyana Delgado**

[tdelgado@cliniclegal.org](mailto:tdelgado@cliniclegal.org)

**Ilissa Mira**

[imira@cliniclegal.org](mailto:imira@cliniclegal.org)



LEGAL  
ACTION  
CENTER

AMERICAN IMMIGRATION COUNCIL

## **DACA Legal Services Fellow**

**Patrick Taurel**

[ptaurel@immcouncil.org](mailto:ptaurel@immcouncil.org)

## **DACA Renewal Network**

<http://unitedwedream.org/dacarenew/#>

## **DACA Resources**

[www.WeOwnTheDream.org](http://www.WeOwnTheDream.org)

## **Toll free DACA community hotline:**

**(855) DREAM-31**