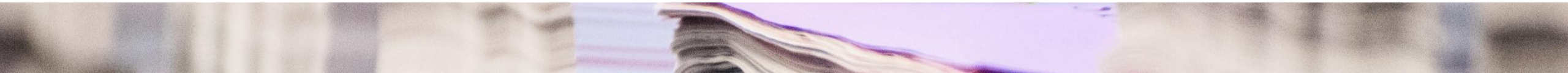


# Demystifying DACA

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# What DACA is

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- Created in 2012 by Executive Order
- File every two years (\$495 USCIS filing fee)
- Employment authorization card in two-year increments
- Ability to obtain state driver's license (valid record in SAVE system)
- “Deferred action” = temporary relief from deportation

# What DACA is NOT

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- Not really a status
- No free tuition; no receipt of federal financial aid
- No path to a green card
- No path to citizenship
- No path to a nonimmigrant visa
- No permanency
- A permanent program
- The DREAM Act
- Not eligible for Medicaid
- Not eligible for ACA

# DACA Eligibility Requirements

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- Under the age of 31 as of June 15, 2012;
- Came to U.S. before 16th birthday;
- Continuously resided in U.S. since June 15, 2007;
- Physically present in U.S. on June 15, 2012, and at time of DACA application;
- Had no lawful status on June 15, 2012;
- Currently in school, graduated, or obtained certificate of completion from high school; obtained GED certificate; honorably discharged veteran of Coast Guard or Armed Forces;

## **AND**

- Not convicted of felony, significant misdemeanor, or 3+ other misdemeanors, and not otherwise pose threat to national security or public safety.



# DACA v. DREAM Act

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## DACA

- Created in 2012 by Executive Action
- No path to a green card
- No path to citizenship
- Approx 800,000 individuals qualify
- No hardship waiver of education, work, and/or service requirement

## DREAM Act

- Introduced in Congress in 2001, many versions; has never passed
- Path to a green card
- Green card gives path to citizens
- 3.4 million individuals qualify under 2017 version
- Hardship waiver of education, work, and/or service requirement

# Significant Misdemeanor

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- Misdemeanor as defined by federal law (one for which max term of imprisonment is one year or less but greater than five days) and:
    - Regardless of sentence imposed, an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of firearm; drug distribution or trafficking; or DUI
- OR**
- If not an offense listed above, one for which the individual was sentenced to time in custody of more than 90 days. The sentence must involve time to be served in custody, and therefore does not include a suspended sentence.



# Non-Significant Misdemeanor

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- Maximum term of imprisonment is one year or less but greater than five days; and
- Not an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or DUI; and
- One for which the individual was sentenced to time in custody of 90 days or less.



# “Why don’t they just file for a green card?”

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- Basis for filing a green card:
  - Asylum/Refugee Status
  - Sponsorship and offer of permanent employment from U.S. employer and proof that U.S. workers are not displaced/disadvantaged
  - U.S. citizen family member (some categories have 20+ year wait)
- Unlawful presence accrue for individuals 18+
  - More than 180 days = **3-year bar**
  - More than one year = **10-year bar**
- Most individuals have accrued unlawful presence that would trigger 10-year bar, which precludes them from benefitting from most green card categories even if they were eligible for one or more category



# DACA Logistics

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- Applicants are photographed and fingerprinted
- Recipients must update USCIS re: address
- Can lose eligibility based on criminal conviction, school dropout, and/or dishonorable discharge



# DACA Statistics

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- About 800,000 DACA recipients nationwide
  - Most numerous: 200,000 in California.
  - Fewest: 10 in Vermont
  - Pennsylvania has 4,900 DACA recipients (.7% of the total)
- DACA recipients hail from more than 100 countries worldwide
- DACA recipients pay about \$2 billion in state and local taxes each year
  - Includes personal income, property, sales, and excise taxes

# DACA Upheaval

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- September 5, 2017: USAG announced termination of DACA, and DHS Acting Secretary Elaine C. Duke officially rescinded the June 15, 2012 memorandum that created DACA
  - No new DACA applicants after October 5, 2017 (still in effect)
  - Deadline of October 5, 2017 to file for extensions (overturned)
  - Those with DACA expiring after March 6, 2018 not be eligible to file DACA extension applications (overturned)
- Advance Parole (travel) program under DACA suspended

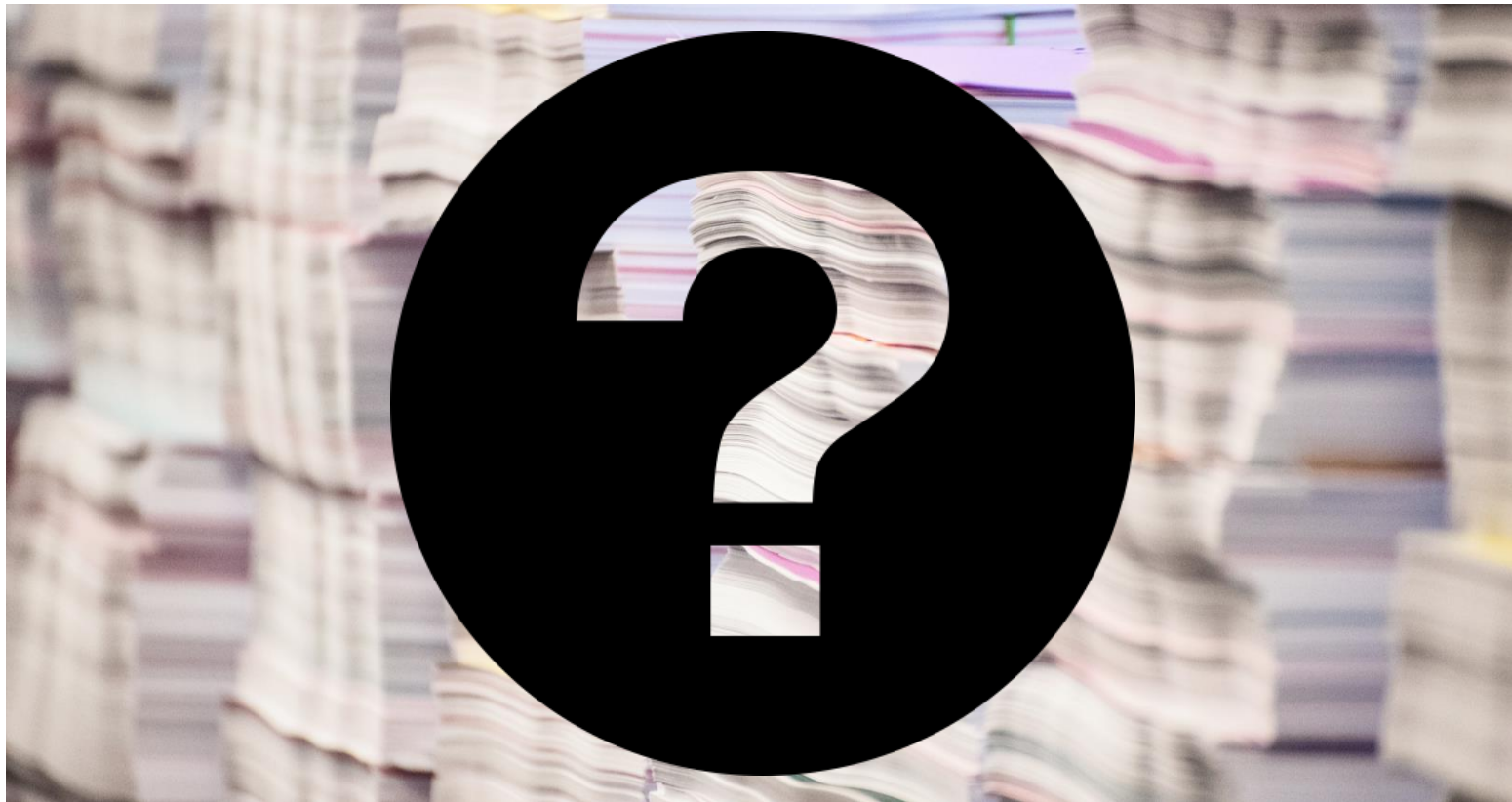
# DACA Litigation Update

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- Currently 6 cases challenging DACA termination
- One case challenges DACA's creation, filed in District Court for Southern District of Texas (TX, joined by AL, AR, LA, NE, SC, WV)
  - May 15, 2018, Court permitted 22 DACA recipient request to intervene as defendants
  - In 2015, 5<sup>th</sup> Circuit Court of Appeals enjoined DACA expansion – same jurisdiction as this case! June 2016 SCOTUS leaves the decision in place with 4-4 non-precedential decision
- January 13, 2018: Court order in San Francisco case, NY case, and USCIS announcement make it possible for people to file DACA renewal applications
- April 24, 2018: a U.S. District Court in the District of Columbia ruling requires USCIS to resume accepting first-time DACA applications — does *not* go into effect until at least *90 days after April 24*.
  - Still no new DACA applications being accepted and it's not clear when they will be

# Questions?

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Senior Associate



**Feige M. Grundman** is a Senior Associate in the Firm's Philadelphia office. Feige's practice includes the representation of Fortune 500, multinational, and private companies with high volume employment based non-immigrant and immigrant visa matters. She has significant experience advising clients on PERM applications and denials, strategies for employing foreign nationals, I-9 compliance, worksite enforcement, and E-Verify compliance. She frequently represents companies before the U.S. Department of State, U.S. Department of Labor, and the U.S. Department of Homeland Security. Feige also prepares filings for individuals seeking to invest in the United States via various visa programs, and counsels those facing 221(g) issues at U.S. Consulates. She also provides pro bono legal counsel to the Adoptee Rights Campaign and assists in lobbying efforts towards obtaining citizenship for all adoptees. A member of the PA, NJ, and FL Bars, Feige is an active member of the American Immigration Lawyers Association. She is a past Board member of the Support Center for Child Advocates and served as an Executive Committee Liaison to the Philadelphia Bar Association's Young Lawyers Division.





# For Further Information

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- HIAS Pennsylvania: <http://hiaspa.org/services/daca>
- American Immigration Council: <https://www.americanimmigrationcouncil.org/research/dream-act-daca-and-other-policies-designed-protect-dreamers>
- National Immigration Law Center: <https://www.nilc.org/issues/daca/>
- Institute on Taxation and Economic Policy: <https://itep.org/state-local-tax-contributions-of-young-undocumented-immigrants/>

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