

## Traveling on Advance Parole

## I. Advance Parole for DACA Recipients

U.S. Citizenship and Immigration Services (USCIS) has created an Advance Parole document that authorizes a person who is present inside the United States to re-enter the U.S. after temporarily traveling abroad. This process is a part of the government's authority to "parole" or allow someone into the U.S. as a matter of discretion.

Applying for an Advance P

An Advance Parole application might look like:

- x A cover letter explaining the purpose of travel and summarizing the documents included in the application
- x USCIS Form I-131, with two recent, passport-sized photographs and (current) \$575 fee
- x Copy of applicant's most recent DACA Approval Notice
- x Documents demonstrating travel purpose, including:
  - o Letter from school or educational program confirming enrollment and "explaining why travel is required or beneficial"
  - o Letter or other document confirming enrollment in program abroad
  - o Applicant's own statement explaining why travel abroad is required

### III. Risks of Traveling Abroad

After traveling abroad, DACA recipients must present themselves at a port of entry in the United States. The Advance Parole document authorizes a Customs and Border Protection (CBP) officer to parole a traveler into the country, but the document itself does not guarantee entry.<sup>9</sup>

Although many DACA recipients have traveled abroad and reentered the United States without adverse consequences, there are certain factors, discussed below that may heighten a DACA recipient's denial of entry at the border and lead to future immigration consequences. It is important to note that a person's history may not have led to denial of DACA or Advance Parole but could raise issues when traveling abroad.

#### A. Risk Factors to Consider

##### 1. Traveling abroad outside the authorized Advance Parole dates or after DACA authorization has expired

Attempting to reenter the United States after the dates authorized on the Advance Parole document or after DACA authorization has expired may result in denial of entry at the border, later, denial of DACA renewal. The Advance Parole document only authorizes parole "prior to" the specific date entered on the document. On that date, a CBP officer may still choose to exercise their parole authority and allow a traveler into the country, but this may affect future immigration options. Prior to the 2017 rescission of DACA and accompanying Advance Parole, there were reports that DACA recipients who had been paroled into the U.S. subsequently received denials or Requests for Evidence when trying to renew their DACA authorization.<sup>10</sup>

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<sup>8</sup> DHS, National Standard Operating Procedures (SOP): Deferred Action for Childhood Arrivals (DACA) (April 4, 2013) P. 137.

<sup>9</sup> See Form I-131 instructions, p. 5.

<sup>10</sup> Immigrant Legal Resource Center and United We Dream, Practice Advisory: DACA Renewal and Advance Parole (April 2016).

## 2. Having a prior removal order

If a DACA recipient has a prior “removal” (or deportation) order and subsequently departed the U.S. and then reentered, travel abroad will trigger severe consequences. It does not matter whether the DACA recipient was an adult or minor when previously deported. Travelers presenting themselves at a port of entry are considered to be seeking admission and are thus subject to the immigration inadmissibility grounds.<sup>11</sup> A DACA recipient in this position would be deemed inadmissible under the “permanent bar”



known as consular processing. With an entry on Advance Parole, a DACA recipient would be able to complete the green card application in the United States. In recent months, immigration agencies and the Supreme Court held that holders of Temporary Protected Status (TPS) who had entered the country on Advance Parole must complete consular processing when applying for a green card.<sup>18</sup> As far as we know, these holdings are not being applied to DACA recipients.

Second, travel during global pandemic comes with risks, which may impact travelers' ability to re-enter the U.S. The Centers for Disease Control (CDC) maintains a list of Travelers Prohibited from Entry to the United States, which is dependent on where the travelers have been.<sup>19</sup>

There are many ways that colleges and universities support their DACA students who are trying to study abroad. Staff play an integral role in properly advising students, helping them apply for Advance Parole, and supporting them while they are abroad and upon re-entry to the United States.

University support of a student with DACA begins before the student even files the Advance Parole application. While many resources, like this one, are available online, students must understand the risk of traveling outside the United States, which applies to them. University staff can do a couple things to help students assess this. First, universities can have a point person in the study abroad office who understands the risks of students with DACA traveling abroad. This staff member would ideally be able to guide and support students throughout the entire study abroad program, whether it is a home-based education abroad program or one at another university or company. Second, staff can facilitate a student's consultation and/or representation with an attorney. Some universities have in-house immigration attorneys who provide legal services for free; others contract with local nonprofit legal services organizations that provide services to students. Importantly, a university's international office that works on student visas or OPTs might not be equipped to address this specific issue in immigration law.

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## VII. Advance Parole Checklist for DACA Recipients

***Prior to speaking with an attorney*** there are certain documents that are helpful to gather in order for an attorney to provide accurate legal advice. These may include:

- %o Copy of current DACA Approval and any previous approval notices
- %o Most recent DACA application
- %o Work permit (Employment Authorization Document)
- %o Information on the educational purpose of your travel (e.g. information on the study abroad program, including dates and how it relates to your studies)
- %o Passport that is valid beyond the time of intended travel (begin passport request/renewal process)
- %o Records of all past or pending tickets, citations, arrests, charges, or convictions
- %o Prepare to discuss when and how you entered the United States, how many times you entered, and if you or your parents have had any interactions with immigration. Gather any documents you might have from your or your parent's immigration case.

***After consulting with an immigration attorney***, the Advance Parole application itself requires:

- %o USCIS Form I-131
- %o \$575 fee (or check USCIS site for current fee)
- %o Two recent, passport-sized photographs
- %o Copy of most recent DACA Approval Notice (USCIS Form I-797)
- %o Applicant's statement explaining educational purpose of travel
- %o Evidence supporting travel purpose including a letter from the program confirming enrollment and explaining how travel is required or beneficial

***After being granted Advance Parole***, here is a checklist to run through to best prepare for travel and reentry into the U.S.:

- %o Do you have your original Form I-512L (approved Advance Parole Document)?
- %o Do you have a copy of your Advance Parole application which indicates the purpose of your travel?
- %o Do you have a Form G-28

## VIII. Answers to FAQs

Please note that the answers below are not specific legal advice, but general answers to common questions. As always, please consult an immigration attorney for specific circumstances.

Why is the program called *Advanced Parole*?

The government is authorized by the Immigration and Nationality Act in section 212(D)(5)(A) to parole—or temporarily allow—a person into the United States on a case-by-case basis for “urgent humanitarian reasons or significant public benefit.” Advance parole is a process by which a person who is currently inside the US receives advance authorization to be paroled into the US after temporarily traveling abroad.

How can we use study abroad and Advance Parole as opportunities to teach universities about immigration?

Raising the issue of Advance Parole within the context of study abroad is a great way to make university staff aware of the diversity of students’ experiences and encourage the university to address all students’ needs. Students with DACA and their allies on campus can use study abroad as an entry point for education as well as a tool for advocacy to ask the university to meet their specific needs. For example, university education abroad programs can adjust their internal timing and requirements to be more flexible with students applying for Advance Parole.

What kind of policies can governments and schools create to protect the safety of an undocumented traveler?

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Of the DACA recipients stuck outside the United States using advanced parole, how many have been students?

We do not have data on this.

Are there any specific education programs or universities/community colleges in the SoCal area that are doing study abroad?

Most universities have their own study abroad programs, e.g. University of Southern California, the University of California system Education Abroad Programs and the California State University system International Programs. Check with your academic advisor at your school.

How can I find a study abroad program for my home country of Mexico? I've checked with my university's study abroad site and they do not have any programs in Mexico.

If a student wants to travel to a specific country and their school does not have a program in that country, there are a couple options. The student can explore private education abroad programs like the Institute of International Education, Academic Travel Abroad or CET Academic Programs which work with universities to ensure credits count toward a degree. There are also non-profit organizations, like The California Mexico Studies Center, that do the same. Alternatively, the student can work with their academic and study abroad advisor to design their own program at a host university in their intended country of study. It is more difficult to design an individual program, students can tailor it to their studies.

What was the name of the educational program run by the Mexican government?

Many years ago, the Mexican Consulate had a program DREAMers to travel to various places in Mexico and learn about the culture. It is unclear whether this program still exists.

Can we encourage universities to pay the \$360 application fee?

The current fee for the Advance Parole application (USCIS Form 1) is \_\_\_\_\_ and this may change in the future. This is another point of advocacy for students who want to be seen and supported by their universities.

I graduated and I am currently working as a professional staff within my university. How can I ask for support?

If there is an educational program you wish to attend, it is worth doing research about the program and speaking with a supervisor or Human Resources (HR) about how attendance in this program will contribute to your knowledge and expertise. (Alternatively, DACA recipients may seek Advance Parole for traveling for employment purposes and it is worth having a conversation with a supervisor or HR about how this may contribute to your professional development.) Remember, there is no requirement that a DACA recipient be currently enrolled in a college or university to travel abroad for educational purposes, but there is an expectation of some sort of evidence from a program or institution that the educational program is required or beneficial.

If we want to study abroad during summer 2022, when would be the best time to apply to Advance Parole?

Now, in summer or early fall 2021. Planning ahead is critical when applying for Advance Parole because, as we know anecdotally, USCIS is taking upward of six months to process these applications. Best practice is to plan study abroad a year in advance and speak with academic and study abroad advisors about the process.

If we are approved for Advance Parole, can we choose the dates and times for how long we will be out of the country, or are they assigned to us?

Applicants for Advance Parole indicate on their Form I-131 the date they wish to travel abroad and the duration of their time outside the United States (e.g. 30 days, 180 days, etc.). It is helpful to provide other evidence that supports these dates, such as the school's academic calendar showing when the semester program ends or a letter from a study abroad advisor. If approved, the Advance Parole document will reflect these dates.

Can charity work be considered a humanitarian reason?

The most recently available guidelines from USCIS are from 2013. (DHS, National Standard Operating Procedures for Deferred Action for Childhood Arrivals (April 4, 2013), p. 136.) They state:

For humanitarian purposes the applicant must show that the travel is for the purpose of:

- Obtaining medical treatment;
- Attending funeral services for a family member; or

Receipt Notice for the DACA renewal application and submit this with the Form I-131, indicating in their cover letter that their DACA renewal is pending and can then supplement their I-131 application after receiving DACA approval. USCIS states that an approved Advance Parole document is "not to exceed the duration of the deferral of removal under DACA." Standard Operating Procedures (800-375-5283) so this may be a tricky process.

For the emergency situations, are some local offices more lenient than others? Do you have to go to the one closest to your residence?

DACA recipients who must travel quickly for emergency situations can call the USCIS National Customer Service Center at 800-375-5283 to schedule an InfoPass appointment for emergency Advance parole. USCIS will schedule an appointment at the local USCIS field office, based on a person's home address. Certain USCIS offices and officers have reputations for exercising their discretion more or less benevolently.

I filed an FBI background check that an attorney suggested to do, in order to figure out if I had a deportation order. Everything came out good, would that still be valid? Should I be okay to apply for advanced parole?

FBI background checks tend to be comprehensive with respect to an individual's contact with the criminal or immigration legal systems. However, this information will not capture all the data that might lead to an increased risk of denial upon re-entry. For example, if a person lived in the U.S. without permission, left the country, and then came back without permission, this information would not show up on an FBI background check, but the person is subject to the ground of inadmissibility known as a "permanent bar." If there is any doubt or lack of clarity about a person's immigration history, DACA recipients can check with family to clarify and file the process through USCIS. When someone applies for a green card and "adjusts" their status to Permanent Resident.

Would a bar still be a risk even if they traveled within their dates and did everything right? Why would that potentially trigger a bar?

