



Current Status of DACA and Alternative Remedies for Recipients

2018 Partnership Conference

Thursday, October 4, 2018

1:15 p.m. – 2:30 p.m.

1.5 MCLE Credits | 1.5 Areas of Professional Practice

*Sponsored by the Committee on Legal Aid and the Committee on Continuing Legal
Education of the New York State Bar Association*

This program is offered for educational purposes.

The views and opinions of the faculty expressed during this program are those of the presenters and authors of the materials. Further, the statements made by the faculty during this program do not constitute legal advice.



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Accessing the Online Course Materials

Below is the link to the online course materials. These program materials are up-to-date and include supplemental materials that were not included in your course book.



www.nysba.org/Partnership2018Materials

All program materials are being distributed online, allowing you more flexibility in storing this information and allowing you to copy and paste relevant portions of the materials for specific use in your practice. WiFi access is available at this location however, we cannot guarantee connection speeds. This CLE Coursebook contains materials submitted prior to the program. Supplemental materials will be added to the online course materials link.

New York State Bar Association FORMS FOR VERIFICATION OF PRESENCE AT THIS PROGRAM

Pursuant to the Rules pertaining to the Mandatory Continuing Legal Education Program for Attorneys in the State of New York, as an Accredited Provider of CLE programs we are required to carefully monitor attendance at our programs, to ensure that certificates of attendance are issued for the correct number of credit hours in relation to each attendee's actual presence during the program. Therefore, we ask that you complete this form and return to our registration staff at the end of the program. Each person may only turn in his or her form at the appropriate times—you may not turn in a form for someone else. Also, if you leave the program at some point prior to its conclusion, you should check out at the registration desk. Unless you do so, we may have to assume that you were absent for a longer period than you may have been, and you will not receive the proper number of credits.

**Please turn in this form at the end of the program,
with your program evaluation form.**

**Current Status of DACA and Alternative Remedies for Recipients
2018 Partnership Conference
Thursday, October 4, 2018 | Albany**

Name: _____
(please print)

I certify that I was present during this program.

Signature: _____ Date: _____

NEW YORK STATE BAR ASSOCIATION

Live Program Evaluation (Attending In Person)

Please complete the following program evaluation. We rely on your assessment to strengthen teaching methods and improve the programs we provide. The New York State Bar Association is committed to providing high quality continuing legal education courses and your feedback is important to us.

Program Name:

Program Code:

Program Location:

Program Date:

1. What is your overall evaluation of this program? Please include any additional comments.

☐ Excellent ☐ Good ☐ Fair ☐ Poor

Additional Comments _____

2. Please rate each Speaker's Presentation based on **CONTENT** and **ABILITY** and include any additional comments.

	CONTENT				ABILITY			
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Additional comments (CONTENT)

Additional comments (ABILITY)

3. Please rate the program materials and include any additional comments.

☐ Excellent ☐ Good ☐ Fair ☐ Poor

Additional comments

4. Do you think any portions of the program should be **EXPANDED** or **SHORTENED**? Please include any additional comments.

☐ Yes – Expanded ☐ Yes – Shortened ☐ No – Fine as is

Additional comments

5. Please rate the following aspects of the program: **REGISTRATION; ORGANIZATION; ADMINISTRATION; MEETING SITE** (if applicable), and include any additional comments.

	Please rate the following:				
	Excellent	Good	Fair	Poor	N/A
Registration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Organization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Administration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Meeting Site (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments

6. How did you learn about this program?

☐ Ad in legal publication ☐ NYSBA web site ☐ Brochure or Postcard
☐ Social Media (Facebook / Google) ☐ Email ☐ Word of mouth

7. Please give us your suggestions for new programs or topics you would like to see offered



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New York Rules of Professional Conduct

These Rules of Professional Conduct were promulgated as Joint Rules of the Appellate Divisions of the Supreme Court, effective April 1, 2009, and amended on several occasions thereafter. They supersede the former part 1200 (Disciplinary Rules of the Code of Professional Responsibility).

The New York State Bar Association has issued a Preamble, Scope and Comments to accompany these Rules. They are not enacted with this Part, and where a conflict exists between a Rule and the Preamble, Scope or a Comment, the Rule controls.

This unofficial compilation of the Rules provided for informational purposes only. The official version of Part 1200 is published by the New York State Department of State. An unofficial on-line version is available at www.dos.ny.gov/info/nycrr.html (Title 22 [Judiciary]; Subtitle B Courts; Chapter IV Supreme Court; Subchapter E All Departments; Part 1200 Rules of Professional Conduct; § 1200.0 Rules of Professional Conduct).

**[http://nycourts.gov/rules/jointappellate/
NY-Rules-Prof-Conduct-1200.pdf](http://nycourts.gov/rules/jointappellate/NY-Rules-Prof-Conduct-1200.pdf)**

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Current Status of DACA & Alternative Remedies for Recipients
Timed agenda (75 minutes total)

Overview of DACA challenges, 2017 rescission, and current status (37.5 minutes)

By: Hannah Vickner Hough

Original DACA directive – eligibility and benefits (5 minutes)

Legislative overview and legal challenges 2012 – 2017 (2.5 minutes)

September 5th 2017 – Rescission and implications (5 minutes)

Overview of legal challenges and decisions relating to rescission (10 minutes)

- Regents of the University of California, et al. v. DHS
- Batalla Vidal, et al. v. Neilsen, et al. and State of New York, et al. v. Trump, et al.
- Inland, et al. v. Neilson et al.

Overview of proposed legislative remedies: starts and stops (10 minutes)

- BRIDGE ACT (H.R. 496)
- RAC ACT (H.R. 1468)
- Hope Act (H.R. 3591)
- SUCCEED Act (S. 1852)
- DREAM Act (S. 1615 & H.R. 3440), ect.

Current situation for DACA recipients (updated to include more recent changes)(5 minutes)

- questions

Alternative Remedies for DACA recipients (37.5 minutes)

By: Sarah Bertozzi

Identifying alternate forms of relief for current/former DACA recipients (2.5 minutes)

Eligibility for alternate relief under current US immigration law (10 minutes)

- Asylum, Withholding of Removal & CAT
 - o Overview: Basic elements & grounds
 - o Affirmative & defensive processes
 - o Common claims
 - o Common bars
- Non-LPR Cancellation of Removal (10 minutes)
 - o Overview & basic elements
 - o Presence
 - o Good Moral Character
 - o Hardship
- Adjustment of status & waivers (10 minutes)
 - o Overview of Family-based adjustment
 - o Immediate relative vs. preference category analysis
 - o Two-step petition & adjustment vs. consular processing
 - o Waivers available for inadmissibility and ineligibility
- Quick overview of T-visa, U-visa, VAWA as potential relief (5 minutes)

Table of Contents
**Current Status of DACA and Alternative Remedies
for Recipients**

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DACA – Deferred Action for Childhood Arrivals History, Challenges, and Options

Hannah Vickner Hough - Legal Aid Society of Rochester
Irene Rekhviashvili - Journey's End Refugee Services, Office for New Americans



Original DACA eligibility

- Department of Homeland Security Policy:
 - Came to the U.S. undocumented
 - Under the age of 16
 - Lived continuously in the U.S. from 2007 until 2012
 - Under the age of 31 as of June 2012
 - Have completed education or in the process
 - Not a public safety/nation security risk
 - No significant misdemeanors

DACA BENEFITS

- Permission to work
 - Social Security Number: Taxpayer
- Deferred Action on Deportation Proceedings
- Valid for 2 years w/ option to renew
- No legal status in U.S.
- No ability to pursue Citizenship
- No permission to travel outside of U.S. w/out further applications

Challenges to Policy

- 2012 challenge on the basis of executive overreach dismissed for lack of standing and upheld by the 5th cir.
- Texas and 25 other states won a lawsuit against the Obama administration by having a federal district judge block the implementation of an expanded version of the 2012 DACA and of another deportation reprieve program, Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). An appeals court upheld the ruling, and in 2016 the Supreme Court ruled 4-4 on the case, leaving in place the lower court's ruling.
- No court has ruled DACA unconstitutional, and most have declined to address the issue

DACA RECISSION

- September 5th announcement – DACA program ended
 - No new applications accepted
 - Pending applications will be processed
 - Current DACA work permits remain valid until their expiration date
- Recipients with DACA whose work permit expires on or before March 5, 2018, could apply for renewal.
- Those who wanted to renew, application's must be filed on or before October 5, 2017

Challenges to Rescission

- Regents of the University of California, et al. v. DHS - On January 9, 2018, the federal district court for the Northern District of California issued a nationwide preliminary injunction and ordered DHS to continue the DACA program. The government appealed and filed a writ of cert before judgment to the Supreme Court, which was later denied.
- Batalla Vidal, et al. v. Neilsen, et al. and State of New York, et al. v. Trump, et al. - On February 13, 2018, the federal district court for the Eastern District of New York issued a similar nationwide injunction prohibiting DHS from moving forward with the DACA rescission. The court considered many of the same factors and arguments discussed in the California case, and agreed with the California court's conclusions of fact and law.
- NAACP v. Trump and Princeton v. Trump, - On April 24, 2018, Judge John Bates of the U.S. District Court for the District of Columbia issued a final judgment that (a) grants, in part, summary judgment in favor of Deferred Action for Childhood Arrivals (DACA) recipients and organizations that sued to reverse the Trump administration's termination of the DACA program and (b) orders that the memorandum terminating the program be vacated.
- Inland, et al. v. Neilson et al. - The court certified a nationwide class and blocked the administration from revoking recipients' DACA status so long as the individuals had not been convicted of crimes that would disqualify them from receiving DACA protection. The court also ordered the government to reinstate those whose DACA status was unlawfully revoked.

Challenges to DACA

- On May 1, 2018, Texas and six other states filed a lawsuit in the U.S. District Court for the Southern District of Texas challenging the 2012 DACA program itself. On May 2, the plaintiffs asked the court to issue a preliminary injunction that would stop USCIS from adjudicating applications for deferred action under DACA while the lawsuit is pending.
- The plaintiff states' complaint raises the same legal claims that the 2015 *U.S. v. Texas* lawsuit did, alleging that the creation of DACA violated both the procedural and substantive requirements of the Administrative Procedure Act, as well as the Take Care Clause of the U.S. Constitution. They seek a declaration that DACA is unlawful and a nationwide order prohibiting the government from issuing new periods of deferred action under the program.

Legislative Action

- BRIDGE ACT (H.R. 496)
- RAC ACT (H.R. 1468)
- Hope Act (H.R. 3591)
- SUCCEED Act (S. 1852)
- DREAM Act (S. 1615 & H.R. 3440), ect.
- Political issues at stake
 - o Path to citizenship
 - o restrictions to family immigration
 - o border security
 - o diversity visa
 - o sanctuary jurisdiction

Current situation

- Update on Litigation
- Update on Legislation
- Update on Individual DACA recipients

Alternative Remedies for DACA Recipients

Alternate forms of relief for current/former DACA recipients under current US immigration law

- Asylum, Withholding of Removal & CAT
- Non-LPR Cancellation of Removal
- Adjustment of status & waivers
- T-visa, U-visa, VAWA

Asylum, Withholding of Removal & Protection Under the Convention Against Torture (CAT)

Basic elements & grounds, benefits

Asylum elements:

- Inside the United States
- Past persecution or well-founded fear of future persecution
- On account of race, religion, nationality, political opinion or membership in a particular social group
- Persecution by the government, or by non-government actor that the government is unable or unwilling to control
- Not firmly resettled anywhere else in the world
- Must apply within one year of arrival (DACA recipients may be exception)

Benefits:

- Path to LPR and Citizenship, right to work, public assistance, family reunification, right to travel

Basic elements & grounds: Withholding of Removal and CAT

Withholding of Removal

- Must prove that it's more likely than not that person will be persecuted in their home country on account of race, religion, nationality, political opinion or membership in a particular social group.

CAT

- Demonstrate a clear probability that they will be tortured directly by or with the acquiescence of the government if sent back to country of origin. Usually reserved for individuals with convicted of particularly serious crimes

For Withholding and CAT:

- No one year bar, some crimes disqualify individual for asylum, but not from CAT or withholding
- Can't petition family, can't leave the U.S., must reapply for work permit every year, not a path to LPR or citizenship, right to not as many benefits, deportation to safe third country

Affirmative and Defensive process (Asylum, etc. cont.)

Asylum Offices (US Citizenship and Immigration Services)

- Proactively File I-589, Application for Asylum and for Withholding of Removal (and CAT) by mail
- Non-adversarial interview at USCIS branch office
- Possible outcomes: Grant of Asylum or referral to Immigration Court

Removal Proceedings (Immigration Court)

- Be referred to court by asylum office or by ICE
- File for Asylum, Withholding of Removal and CAT as defense to unlawful presence in the U.S.
- Trial on the merits of individual's case
- Appeal to Board of Immigration Appeals, then Circuit Courts, then SCOTUS

Common Claims (Asylum, etc. cont)

Family membership

Sexual minorities

Witnesses/informants

Former gang membership

Gender based social group

Political opinion claims

Resistance to gang recruitment as an expression of political dissent

Journalists

Common Bars (Asylum, etc. cont)

Asylum: Terrorist Activity, one year filing deadline, persecution of others based on five protected grounds, committed a "serious nonpolitical crime" outside the United States, pose a danger to the security of the United States, have been firmly resettled in another country before arriving in the United States.

Withholding of Removal: Is a persecutor, convicted of particularly serious crime

CAT: Very low approval rate

Non - Legal Permanent Resident Cancellation of Removal

Defense in removal proceedings that can result in a Green Card

Eligibility:

- Physically present in the United States continuously for at least ten years;
- Had good moral character for ten years;
- Has not been convicted of certain offenses [crimes listed in INA sections 212(a)(2), 237(a)(2), or 237(a)(3)]; and
- to deport individual would cause exceptional and extremely unusual hardship to her LPR or U.S. citizen spouse, child, or parent.

Family-Based Adjustment of Status and Consular Processing

Overview:

Certain family members can petition for family members to receive Green Cards based on family relationship

Process varies based on family relationship, status of petitioner, age, marital status, location of beneficiary, length of unlawful stay in U.S.

Bars and waivers

Immediate Family vs. Preference Categories (Family - based review, cont)

U.S. Citizen can petition: Spouse, child, parent, sibling.

Spouse, unmarried child under 21 and parents are considered immediate family and they can apply for a family petition (I-130) and the green card (I-485) at the same time, and have interview for the Green Card in the United States.

LRP can petition: spouse, unmarried child of any age.

Interview outside of the U.S. at an U.S. embassy.

I-130 must be filed first, and beneficiary will have to wait some period of time according to their preference category (based on the visa bulletin) before being able to apply for a Green Card.

Inadmissibility and Ineligibility, Waivers (family-based relief, cont)

The general categories of inadmissibility include

- health
- criminal activity
- national security
- public charge
- fraud and misrepresentation
- prior removals
- unlawful presence in the United States

Waivers may be available for some of these categories

Other Potential Relief: T-visa, U-visa, VAWA

U-Visa: Immigration relief for survivors of domestic violence and other crimes

U-Visa: Immigration relief for survivors of sex or labor trafficking

VAWA (Violence Against Women Act): Immigration relief for survivors of domestic violence and other crimes

Faculty Biographies

Hannah Vickner Hough is an Immigration Staff Attorney at the Legal Aid Society of Rochester. She was admitted to practice law in New York in 2010. Throughout her career she has focused her legal practice on the representation of migrants and immigrants; specifically those affected by domestic violence, human rights abuses and human trafficking.

As an attorney at the Legal Aid Society she represents indigent clients with affirmative applications to United States Citizenship and Immigration Services (USCIS) and in removal proceedings before the Executive Office of Immigration Review (EOIR). She represents individuals seeking immigration relief in the areas of; asylum, adjustment of status, Violence Against Women Act (VAWA) applications and visas for trafficking survivors and victims of violence.

Hannah previously worked at the Volunteer Lawyers Project and the Pennsylvania Immigration Resource Center, where she has represented both detained and non-detained individuals before the, Federal Immigration Courts in Buffalo and Batavia, NY and York, PA. From 2012 to 2015, Hannah lived and worked in Nepal where she was the Director of Legal Services, at Tiny Hands. Tiny Hands is an international non-profit which provides legal support to survivors of human trafficking. During her stay in Nepal, Hannah became fluent in Nepali, which allows her to fill a specific need for legal representation of Nepali speaking refugees.

Hannah is admitted to practice before the United State District Court for the Western District of New York. She is also a member of the New York State Bar Association, and the Upstate New York Chapter of the American Immigration Lawyers Association.

Irene Rekhviashvili is an immigration lawyer working at Journey's End Refugee Services. She is positioned as the Region 6 Legal Counsel for New York State's Office For New Americans and provides legal advice and representation to individuals in Western NY, the Southern Tier and the Finger Lakes regions. Ms. Rekhviashvili primarily works out of Vive, an asylum seeker shelter located on Buffalo's east side. Working out of this location has allowed Ms. Rekhviashvili to meet, evaluate, represent and/or advise hundreds of asylum seekers over her 3+ years stationed at Vive. Ms. Rekhviashvili's work has included assisting individuals with asylum, citizenship, removal proceedings and family reunification.

Notes Pages











