

PRACTICE ADVISORY¹

Updated September 15, 2014

**Termination or Administrative Closure of Removal Proceedings
Based on Prima Facie Eligibility for DACA, and Sample Motion**²

Practitioners are advised to file applications for respondents who are eligible for prosecutorial discretion under Deferred Action for Childhood Arrivals (DACA) program with USCIS as early in the removal proceedings as possible. Attorneys may wish to use the accompanying sample motion when seeking to terminate or, in the alternative, administratively close removal proceedings based on prima facie eligibility for DACA. The motion is available in Word format to allow attorneys to modify it, as necessary.

As a reminder, practitioners should approach the relevant Immigration and Customs Enforcement (ICE) Office of Chief Counsel and ask that they exercise prosecutorial discretion by agreeing to join, or simply not oppose, the motion. Filing jointly generally increases the likelihood that the immigration judge will grant the motion.

If an immigration judge denies a motion to terminate or administratively close a case based on DACA eligibility, counsel still may file a motion to continue removal proceedings while the respondent pursues a DACA application before the U.S. Citizenship and Immigration Services (USCIS).

If the respondent's next hearing will take place before the adjudication of DACA or if the DACA request has been pending beyond the USCIS processing time, counsel may wish to contact the USCIS Ombudsman to request expedited processing.³

Please note that detained respondents may contact the ICE Detention Reporting and Information Line at 1-888-351-4024 (staffed 8:00 a.m. – 8:00 p.m., Monday – Friday) or submit an email to ERO.INFO@ice.dhs.gov to request release from detention based on DACA eligibility. Upon release from detention, these individuals may file a DACA application with USCIS.⁴

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² Special thanks to Aradhana Tiwari, a third year law student at Northeastern University School of Law, for researching and drafting the accompanying sample motion.

³ For information about contacting the USCIS Ombudsman, *see* <http://www.dhs.gov/ombudsman-case-assistance>.

⁴ For more information about ICE policies on DACA, please see <http://www.ice.gov/daca/>.

Practitioners representing DACA-eligible individuals, who are currently in mandatory immigration detention because of a criminal conviction, may wish to consider post-conviction relief.

Please contact us: NIPNLG would like to hear about the cases of DACA-eligible individuals in removal proceedings, especially those who are currently in immigration detention, as well as how the immigration courts are deciding motions to terminate and administratively close based on prima facie eligibility for DACA. Please email Paromita Shah (paromita@nipnlg.org) and Rosa Saavedra Vanacore (rosasv@nipnlg.org) with information about such cases.