



Practice Alert

Trump Administration Rescinds DACA Updated September 11, 2017

On September 5, 2017, the Trump Administration announced the elimination of the Deferred Action for Childhood Arrivals (DACA) program. This practice alert explains what the announcement means, what we know about implementation of the rescission, and how to advise clients who currently hold DACA.

Background

In a [June 15, 2012 memorandum](#), the Obama Administration announced the Deferred Action for Childhood Arrivals (DACA) initiative. Since USCIS began accepting DACA applications, almost [800,000 individuals](#) have been granted DACA. President Trump pledged to end DACA as part of his campaign platform, and after his inauguration, a *draft* Executive Order titled [Ending Unconstitutional Executive Amnesties](#) was leaked in [news reports](#). However, he also made [positive comments](#) about Dreamers after becoming president, and his Administration continued adjudicating both initial and renewal DACA applications.

On June 29, 2017, [Texas and nine other states sent a letter to Attorney General Jeff Sessions](#) stating that legal action would be taken to challenge DACA unless DHS agreed to “phase out” the program by rescinding the 2012 DACA memo and halting approval of any new or renewal DACA applications. On September 5, 2017, President Trump caved to their demands and rescinded the DACA program.

How did the Trump administration rescind DACA?

On September 4, 2017, Attorney General Jeff Sessions sent a letter to DHS Acting Secretary Elaine Duke stating the DACA was an “unconstitutional exercise of authority by the Executive Branch” and that legal challenges to the program would “likely” result in DACA being deemed unlawful.¹ On September 5, 2017, Acting Secretary Duke issued a [memorandum](#) officially rescinding the program along with [FAQs](#).

What does the September 5, 2017 DHS memo say?

The [September 5, 2017 memo](#) and [accompanying FAQs](#) rescind the [June 15, 2012 memorandum](#), allow current DACA recipients to keep their work authorization and deferred action grants until they expire, and take the following steps to end the DACA program:

- **Initial DACA Applications:** USCIS will adjudicate properly filed initial DACA requests and associated applications for work authorization that were accepted by USCIS as of September 5, 2017. USCIS will reject any initial DACA requests received after September 5, 2017.
- **Renewal DACA Applications:** USCIS will adjudicate renewal DACA applications and associated applications for work authorization that have been accepted by USCIS as of September 5, 2017. USCIS will also continue to accept renewal applications through October 5, 2017 that are filed by

¹ See DHS Memorandum on Rescission of Deferred Action For Childhood Arrivals (DACA) (September 5, 2017), available at <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

DACA recipients whose benefits will expire between September 5, 2017 and March 5, 2018. USCIS will reject all DACA renewal requests that do not fit these parameters, including all applications received after October 5, 2017.

AILA is seeking clarification on how USCIS will handle cases where the DACA recipient's benefits had expired prior to the announcement. Under the USCIS DACA FAQs in place prior to the rescission on September 5, 2017, if an applicant filed after her most recent DACA period expired, but within one year of its expiration, she could submit a request to renew her DACA. If an applicant applied over one year after the DACA period expired, she had to submit an initial DACA application.

- ***Applications for Advance Parole Based on DACA Grants:*** Effective September 5, 2017, USCIS will not approve any DACA-based applications for Advance Parole (Forms I-131). Any pending applications for advance parole will be administratively closed, and USCIS will refund the filing fees. Although DHS also stated that it will generally honor the validity period for previously approved applications for advance parole, the FAQs note that CBP retains the right to refuse admission to a person who presents themselves at a port of entry as a matter of discretion.
- ***Current EADs that Are Lost, Stolen, or Destroyed:*** The DHS FAQs state that individuals can still apply to replace a valid EAD that has been lost, stolen, or destroyed.

Can people with currently valid Employment Authorization Documents (EADs) based on DACA still work?

Yes. Any individual with a currently valid EAD can continue to work lawfully. DHS stated that it would not terminate or revoke previous grants of DACA or work authorization solely based on its decision to rescind the DACA program.

What if a DACA recipient is currently outside the U.S. but has a valid Advance Parole document?

According to the September 5, 2017 memo, DHS generally will honor the validity period for previously approved applications for advance parole. That means that DACA recipients who are currently outside the U.S. with a valid advance parole document should be able to reenter the country as long as they seek to reenter before the expiration of the advance parole. However, it is important to keep in mind that CBP maintains the position that advance parole does not guarantee admission to the United States. In addition, DHS may revoke or terminate a grant of advance parole at any time, including while your client is outside the U.S., which would inhibit or prohibit their ability to return. Therefore, DACA recipients who have a valid advance parole document but have not yet left the country should carefully consider whether travel would be advisable given the risks.

Will people with currently valid DACA grants be targeted for enforcement?

People who have currently valid DACA grants and EADs still have deferred action, and DHS should not be arresting or deporting them absent intervening conduct that would make them ineligible for DACA. However, even before the rescission of the program was announced, there were a number of reports of DACA recipients being targeted for enforcement. For example, [Riccy Enriquez Perdomo](#), two time DACA recipient and 22-year-old mother of two was picked up by ICE on August 17, 2017. Riccy went to an immigration office to post bond for another immigrant who was eligible for release, and was arrested by ICE officers. ICE told news outlets that they arrested Riccy because they thought her DACA had expired. She was released from ICE detention after being detained for a week.

Given these news reports and the overall increase in enforcement against people who have no criminal record, AILA members may want to consider what steps they can take to prepare their DACA clients for possible encounters with ICE. AILA created “Know Your Rights” [handouts](#) in several scenarios: ICE worksite raids, ICE home visits, and ICE public stops. These handouts are currently available on www.AILA.org in seven different languages.

Will people whose DACA grants have expired be targeted for enforcement?

In its FAQs released on September 5, 2017, DHS stated that “[i]nformation provided to USCIS in DACA requests *will not be proactively provided to ICE and CBP* for the purpose of immigration enforcement proceedings, unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS’ Notice to Appear guidance (www.uscis.gov/NTA).”² [Emphasis added.]

This policy is similar to, but not exactly the same as, the prior DACA confidentiality policy. This prior policy was posted in [USCIS’s FAQs on DACA](#) and included the following statement: “[i]nformation provided in [a] request *is protected from disclosure* to ICE and CBP for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice to Appear or a referral to ICE under the criteria set forth in USCIS’s Notice to Appear guidance (www.uscis.gov/NTA).”³ [Emphasis added.]

It is clear under both policies that USCIS will share information provided on DACA applications for enforcement purposes in cases where the requester meets the criteria articulated in the NTA memo. However, because the new policy says that information will not be “proactively provided to ICE and CBP,” it is unclear whether USCIS will share information on DACA applications if requested by ICE. Additionally, while the NTA guidance referenced by DHS as of the date of this practice alert is the [2011 USCIS NTA guidance](#), AILA has been advised that this guidance is under review and could be revised in the future.

How can AILA members prepare their DACA clients for the expiration of their work authorization and deferred action grants?

² **“Q7: Once an individual’s DACA expires, will their case be referred to ICE for enforcement purposes?”** A7: Information provided to USCIS in DACA requests will not be proactively provided to ICE and CBP for the purpose of immigration enforcement proceedings, unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS’ Notice to Appear guidance (www.uscis.gov/NTA). This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law by any party in any administrative, civil, or criminal matter.” (Last [accessed](#) September 5, 2017.)

³ **“Q 19: Will the information I share in my request for consideration of DACA be used for immigration enforcement purposes?”** Information provided in [a] request is protected from disclosure to ICE and CBP for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice to Appear or a referral to ICE under the criteria set forth in USCIS’s Notice to Appear guidance (www.uscis.gov/NTA). Individuals whose cases are deferred pursuant to DACA will not be referred to ICE. The information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of DACA, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense. The above information sharing policy covers family members and guardians, in addition to the requestor. This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law by any party in any administrative, civil, or criminal matter.” (Last [accessed](#) September 5, 2017.)

One of the most important things AILA members can do is screen all DACA clients to determine whether they might be eligible for other, more lasting forms of relief. For more information, see the American Immigration Council's practice advisory, [Screening Potential DACA Requestors for Other Forms of Relief](#).

As mentioned above, members may also want to consider what steps they can take to prepare their DACA clients for possible encounters with ICE. AILA created "Know Your Rights" [handouts](#) in several scenarios: ICE worksite raids, ICE home visits, and ICE public stops. These handouts are currently available on www.AILA.org in seven different languages.