

ALERT

Trump Administration Scales Back Availability of DACA While Deciding Whether to End It

JULY 30, 2020

U.S. Department of Homeland Security (DHS) Acting Secretary Chad Wolf issued a **memorandum** on July 28, 2020, that significantly pares down the availability of Deferred Action for Childhood Arrivals (DACA) while the agency decides whether to rescind DACA completely.¹

Rescission of Prior DHS Memoranda Ending Original DACA

The memorandum comes as a response to the **U.S. Supreme Court's June 18, 2020, decision** finding that the Trump administration's 2017 rescission of DACA was done in an arbitrary and capricious way that violated the Administrative Procedure Act (APA).² The Supreme Court's opinion left open the possibility that the Trump administration could attempt to terminate DACA again but required that it be done in a way that complies with federal law, including the APA. The Court's decision left in place the 2012 DHS policy memo that initiated DACA.³

The July 28, 2020, DHS memo explicitly rescinds the prior 2017 and 2018 DHS memoranda that attempted to end DACA. The July 28, 2020, memo supersedes and replaces those earlier actions by DHS.

Implications of Scaled-Back DACA

Under the changes announced in the July 28, 2020, memo, DHS:

- will not accept any new applications for DACA by initial (first-time) applicants
- will continue to adjudicate applications for renewal from people who've had DACA in the past, but will cut the duration of deferred action and employment authorization granted from two years to one year

¹ https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf.

² https://www.supremecourt.gov/opinions/19pdf/18-587_5ifl.pdf.

³ On July 17, 2020, in a separate case challenging the Trump administration's termination of DACA, a U.S. district court judge in Maryland issued an order that vacated the administration's rescission of DACA and also restored the 2012 DACA policy. <https://www.nilc.org/wp-content/uploads/2020/07/CASA-v-DHS-order-2020-07-17.pdf>.

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- will reject all pending and future applications for advance parole from DACA recipients, except in *exceptional circumstances*, which the memo does not define
- will not use the memo as a basis to terminate any previously issued grants of deferred action, work authorization, or advance parole for their remaining periods of validity
- will not make any changes to the information-sharing policy reflected in the Frequently Asked Questions issued with the original 2012 DACA policy
- reserves its authority to terminate or deny deferred action at any time, in its discretion

Although the memo does not change the application fee for DACA, the cost for DACA renewal applicants will effectively double, since grants of DACA will now last only one year.

Additional Changes, Including Full Termination of DACA, Under Consideration

This new policy may be short-lived, since the memo states that it reflects “interim changes” while the administration determines whether to fully rescind DACA. The memo notes that DHS has determined that DACA presents, at a minimum, “serious policy concerns” that may warrant its full termination. The memo says repeatedly that DHS will consider these ostensible concerns in deciding whether to make further changes to the DACA policy or to terminate it completely.

What Comes Next?

While the Supreme Court’s decision was a tremendous victory for the over 700,000 young immigrants whose home is here — and a testament to their tireless organizing — DACA remains at risk of being scaled back further or terminated completely by the Trump administration. In addition, Texas and several other states continue to pursue a legal challenge to DACA that is proceeding in a U.S. district court in Texas. On July 24, 2020, the parties in that case submitted a joint status report to the court with competing proposals and timelines for how that case should proceed. The court in Texas will determine the path forward for that case.

In coming days, NILC’s website will be updated with additional DACA-related analysis and guidance.