



ALERTS

DHS Implements Changes To DACA Program In Light Of Supreme Court Ruling

July 29, 2020

Highlights

Department of Homeland Security releases a memorandum impacting DACA in response to a June U.S. Supreme Court decision

Homeland Security is undertaking a review regarding the future of DACA

Grants of DACA and associated employment authorization documents are reduced from two years to one year

All initial requests for DACA will be rejected and all pending and future requests for advance parole from DACA grantees will be rejected absent exceptional circumstances

In [response to a June U.S. Supreme Court ruling](#) rejecting an earlier attempt to terminate the Deferred Action for Childhood Arrivals (DACA) program, the U.S. Department of Homeland Security (DHS) on July 28 released a memorandum titled "[Reconsideration of the June 15, 2012 Memorandum entitled 'Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children.'](#)"

This new memorandum halts all "initial" applications for DACA, rejects

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nearly all applications for advance parole by DACA grantees, and reduces grants of DACA and associated employment authorization documents from two years to one year while it undertakes a review of the program.

Since a federal court announced earlier this month that the DHS must begin to accept new applications for DACA as a result of the Supreme Court's ruling, it is likely that the memorandum may be subject to a legal challenge.

After the Trump administration attempted to rescind DACA under then-Attorney General Jeff Sessions and then-DHS Secretary Elaine Duke, several legal challenges ensued. While all parties agreed that the administration possessed the authority to rescind DACA, the dispute primarily concerned the procedure the administration was required to follow in rescinding DACA.

Several lower courts blocked the effort and their cases ended up at the U.S. Supreme Court for review. In June, in *Department of Homeland Security v. Regents of the University of California*, the Supreme Court blocked an earlier attempt by the Trump administration to rescind DACA. It ruled that the Administration failed to provide an adequate reason to justify ending the program.

Even with this memorandum, employers may continue to legally employ DACA grantees, so long as these individuals continue to possess valid employment authorization documents. Employers and individuals with DACA grants should note that moving forward, the validity periods for DACA renewals and associated employment authorization documents are reduced to one year, and plan accordingly. Employers should ensure that employees with a grant of DACA file applications for renewal well in advance of the expiration date, and take into account current immigration processing times and production delays with the issuance of employment authorization documents.

As a reminder, the DACA category is not eligible for an automatic extension of employment authorization based solely upon the filing of a renewal request.

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