

# Trump Administration Ends Deferred Action For Childhood Arrivals (“DACA”)

September 6, 2017 by Pilar Morin and Jenny Denny

On September 5, 2017, United States Attorney General Jeff Sessions announced the rescission of the Deferred Action for Childhood Arrivals (“DACA”) program, a 2012 program created under the Obama administration that deferred deportations and provided work permits for people those who met the program’s criteria. The Department of Homeland Security (“DHS”), the federal agency that oversees the program, formally rescinded the program via a [memorandum](#) informing the public that DACA will be phased out and will end by March 5, 2018 unless Congress passes a legislative alternative. This action rescinds the June 15, 2012, memorandum entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” which established the program. California is home to more than 200,000 DACA recipients.

## *Who are DACA recipients?*

To qualify for DACA status, applicants were required to establish they 1) Were under the age of 31 as of June 15, 2012; 2) Came to the United States before reaching his/her 16th birthday; 3) Continuously resided in the United States since June 15, 2007; 4) Were physically present in the United States on June 15, 2012 and at the time of making his/her request for consideration of deferred action with USCIS; 5) Had no lawful status on June 15, 2012; 6) Were in school, graduated or obtained a certificate of completion from high school, obtained a general education development (GED) certificate, or were honorably discharged veterans of the Coast Guard or Armed Forces of the United States; and 7) Had not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and did not otherwise pose a threat to national security or public safety. Individuals who received DACA status are often referred to as “Dreamers”.

## *What did DACA provide?*

Under the DACA policy, undocumented immigrants who applied and demonstrated they meet the criteria were eligible to receive deferred removal action for a period of two years, subject to renewal, and were also eligible to apply for work authorization. Only those DACA recipients who demonstrated “an economic necessity for employment” were eligible for work authorization.

## *What happens to current DACA holders in light of the policy rescission?*

DACA recipients will retain both the period of deferred action from removal proceedings and Employment Authorization Documents (work permits) until they expire. DHS has discretion to end those benefits before they expire on a case-by-case basis. However, DHS stated it will not terminate previously granted DACA status or Employment Authorization Documents for the remaining duration of their validity periods solely based on the directives in the September 5, 2017, memo.

DHS will individually adjudicate all initial requests for DACA status that it received as of September 5, 2017. DHS will also individually adjudicate all status renewal requests received by October 5, 2017, for DACA recipients whose benefits expire between now and March 5, 2018. DACA recipients whose benefits expire after March 5, 2018, are not eligible to renew their benefits if they have not already submitted a renewal action.

DHS will continue to exercise its discretionary authority to terminate or deny deferred action at any time when immigration officials determine termination or denial of deferred action is appropriate. When an individual's deferred action period expires or is terminated, his or her removal will no longer be deferred; that individual will be subject to deportation and will no longer be eligible for lawful employment unless Congress enacts new legislation. There is uncertainty as to what will happen during the six month period Congress has to act.

#### *Will this affect travel of DACA recipients?*

Prior to September 5, 2017, DACA recipients had to apply for an advance parole travel document in order to re-enter the United States if they left the country for any reason. DHS will no longer approve advance parole applications for DACA recipients but will generally honor previously approved advance parole it granted. Customs and Border Patrol has authority to exercise discretion in determining the admissibility of any person presenting at the border and the eligibility of such persons for parole. DHS retains the authority to revoke or terminate an advance parole document at any time. As a result, DACA recipients should carefully consider travel outside of the United States as it is unclear how these policy changes will impact their ability to return.

#### *Employment issues*

Employers may be concerned about the effects of this policy change on their workplace. Depending on when an individual was granted or renewed his or her DACA status, DACA benefits could expire as soon as March 2018, if not sooner, or as late as 2020 if renewed before the October 5, 2017, cutoff date. DACA recipients who received Employment Authorization Documents have a right to work using those documents until they expire.

DACA recipients working under an Employment Authorization Document are protected from adverse employment actions. Employers may not be aware that some of their employees are DACA recipients and should not seek to identify them. California Labor Code section 1019.1 protects immigrant employees from document abuse including from an employer's refusal to honor documents or work authorization based upon the specific status or term of status that accompanies their authorization to work. Similar protections exist under the anti-discrimination provision of the federal Immigration and Nationality Act. DACA employees are also protected against discrimination and harassment on the basis of race or national origin under both state and federal law.

However, once the Employment Authorization Documents expire, an employer can no longer employ DACA recipients without risking civil and criminal penalties. (8 U.S.C. § 1324a(a)(1)(A) and (a)(2)) Federal law prohibits the continued employment of an undocumented person once the employer knows the individual is or has become unauthorized for employment.

#### *Education issues*

The phasing out of DACA does not impact a student's ability to attend California's higher education institutions, qualify for an exception from non-resident tuition fees under AB 540, or to apply for financial aid under provisions of the [California Dream Act](#). AB 540 and the California Dream Act are state programs that are entirely separate and distinct from DACA and the federal enforcement of immigration laws.

#### *What happens next?*

Congress has the authority to amend the existing immigration laws. See the [Frequently Asked Questions](#) document that addresses the rescission of DACA released from DHS. We will continue to send out similar alerts as new developments unfold in this quickly changing landscape.