



September 26, 2025

PM-602-0191

Policy Memorandum

SUBJECT: Termination of Consideration of Deferred Action for Childhood Arrivals (DACA)
Based on DACA Recipients' Unlawful Attempts to Purchase a Firearm Under 18
U.S.C. 922(g)(5)

Purpose

U.S. Citizenship and Immigration Services (USCIS) is instructing USCIS officers to initiate certain post-adjudicative actions to ensure that DACA is properly terminated when DACA recipients engage in certain unlawful acts. This memorandum provides guidance on the exercise of discretion for USCIS officers to issue a Notice of Intent to Terminate (NOIT) per applicable regulations and standards, citing the unlawful attempt to purchase a firearm under [18 U.S.C. 922\(g\)\(5\)](#) in cases where a DACA recipient has, without regard to intent,¹ attempted to purchase a firearm and does not meet one of the exceptions provided in [18 U.S.C. 922\(y\)\(2\)](#).²

Authority

- [8 CFR 236, Subpart C](#) – Deferred Action for Childhood Arrivals
- [18 U.S.C. 922](#) – Unlawful Acts

Background

Executive Order (EO) 14161, [Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats](#), requires that the Department of Homeland Security (DHS) vet and screen to the maximum degree possible all aliens who intend to be admitted, enter, or are already inside the United States.³ When announced, the DHS DACA policy expressly stated

¹ Mistake of law is not a defense unless the statute expressly allows it. See [Bryan v. United States](#), 524 U.S. 184 (1998). For federal firearms laws, the knowing requirement pertains to the act itself, not knowledge of the law. See [United States v. Beavers](#), 206 F.3d 706 (6th Cir. 2000).

² 18 U.S.C. 922(y)(2) provides that Section 922(g)(5)(B) “does not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is – (A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States; (B) an official representative of a foreign government who is—(i) accredited to the United States Government or the Government’s mission to an international organization having its headquarters in the United States; or (ii) en route to or from another country to which that alien is accredited; (C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or (D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.”

³ See Executive Order 14161, [Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats](#), [90 FR 8451](#) (Jan. 30, 2025).

that the program “confers no substantive right, immigration status or pathway to citizenship, as only Congress, acting through its legislative authority, can confer these rights.”⁴ This was further reinforced with the promulgation of the DACA regulations.⁵

Under 18 U.S.C. 922(g)(5), it is unlawful for any person who “is illegally or unlawfully in the United States” to possess or receive firearms. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has defined an “alien illegally or unlawfully in the United States” at [27 CFR 478.11](#) to be any alien who is “not in valid immigrant, nonimmigrant or parole status.”⁶ Per 18 U.S.C. 922(g)(5) and ATF regulation, aliens granted DACA are not in valid immigrant, nonimmigrant, or parole status, therefore it is illegal for DACA recipients to possess or receive firearms.⁷

Per [8 CFR 236.22\(b\)](#), requests “for deferred action may be granted only if USCIS determines in its sole discretion” that the requestor meets each of the threshold criteria and merits a favorable exercise of discretion. Similarly, per [8 CFR 236.23\(d\)](#), USCIS retains broad discretion to terminate a DACA grant and may do so at any time in its discretion. This discretionary authority, in conjunction with EO 14161, requires that USCIS vet and screen all DACA requestors to the maximum degree possible to ensure that aliens who are granted DACA merit a favorable exercise of discretion. Further, discretion must be appropriately exercised to ensure that DACA grants are properly terminated when a DACA recipient engages in certain unlawful practices, such as the unlawful attempt to purchase a firearm under 18 U.S.C. 922(g)(5).

Guidance

The termination of a DACA grant must comply with the Administrative Procedure Act (APA), which requires that agency actions not be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.⁸ Additionally, USCIS must comply with DACA regulations at 8 CFR sections [236.21- 236.25](#), which require notice and an opportunity to respond before an alien’s DACA grant is terminated, unless the DACA recipient is convicted of a national security-related

⁴ See 2012 Napolitano Memo entitled [Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children](#).

⁵ The DACA Final Rule was published August 30, 2022, and went into effect on October 31, 2022, to the extent permitted by court orders. The DACA Final Rule codified the June 15, 2012, DACA guidance set forth by Secretary Napolitano. See Deferred Action for Childhood Arrivals, [87 FR 53152](#) (Aug. 30, 2022); see also [8 CFR 236.21 - 236.25](#).

⁶ [27 CFR 478.11](#) defines an “[a]lien illegally or unlawfully in the United States” as aliens “who are not in valid immigrant, nonimmigrant or parole status. The term includes any alien (a) Who unlawfully entered the United States without inspection and authorization by an immigration officer and who has not been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act (INA); (b) Who is a nonimmigrant and whose authorized period of stay has expired or who has violated the terms of the nonimmigrant category in which he or she was admitted; (c) Paroled under INA section 212(d)(5) whose authorized period of parole has expired or whose parole status has been terminated; or (d) Under an order of deportation, exclusion, or removal, or under an order to depart the United States voluntarily, whether or not he or she has left the United States.”

⁷ See also [United States v. Arrieta](#), 862 F.3d 512, 515 (5th Cir. 2017) (because DACA did not change the alien's immigration status, the indictment charging a violation of section 922(g)(5) was sufficient); [United States v. Lopez](#), 929 F.3d 783, 786-87 (6th Cir. 2019) (in noting that DACA recipient was an “alien illegally or unlawfully in the United States for purposes of section 922(g)(5)(A),” the court distinguished 8 U.S.C. 1611(b)(2-4), concerning specific public benefits for aliens who are “lawfully present,” and INA 212(a)(9)(B)(ii), concerning “unlawful presence” for inadmissibility purposes).

⁸ See [5 U.S.C. 551-559](#), 701-706.

offense involving conduct described in [INA 212\(a\)\(3\)\(B\)\(iii\), \(iv\)](#), or [INA 237\(a\)\(4\)\(A\)\(i\)](#), or an egregious public safety offense. Compliance with regulations, by issuing a NOIT and consistently applying the standards for DACA terminations, bolsters the government's position that it is not abusing its discretion or acting in an arbitrary or capricious manner.

Effective immediately, USCIS will complete the following post-adjudicative actions to ensure that DACA is properly terminated when DACA recipients engage in certain unlawful acts.

In general, USCIS officers should consider any attempt by a DACA recipient to unlawfully purchase a firearm to be a significant negative discretionary factor. Subject to the single exception below, when USCIS becomes aware, via notification from U.S. Immigration and Customs Enforcement (ICE) or any other means including the results of security screening and vetting, that a DACA recipient attempted to unlawfully purchase a firearm, USCIS will issue a NOIT citing the unlawful attempt to purchase a firearm under 18 U.S.C. 922(g)(5) as a significant negative discretionary factor.

Further, in cases where ICE has detained the alien due to a determination that the alien poses a national security or public safety risk, the details surrounding the detention should be cited in the NOIT along with the date the alien was taken into custody. Issuance of the NOIT must comply with 8 CFR sections 236.21- 236.25, which requires notice and an opportunity to respond before the alien's DACA grant is terminated. Once the alien has had an opportunity to respond, and if the alien has failed to provide sufficient and persuasive evidence to overcome the grounds for termination outlined in the NOIT, USCIS may issue a Notice of Termination.

The only exception to this NOIT requirement is that USCIS may terminate a grant of DACA without a NOIT and an opportunity to respond if the DACA recipient is convicted of a national security-related offense involving conduct described in INA 212(a)(3)(B)(iii), (iv), or INA 237(a)(4)(A)(i), or an egregious public safety offense. If USCIS terminates a DACA grant without a NOIT and an opportunity to respond, USCIS will provide the alien with notice of the termination.⁹

All aliens whose DACA grants are terminated, including terminations due to evidence indicative of an unlawful attempt to purchase a firearm under 18 U.S.C. 922(g)(5), must be expeditiously referred to ICE (RTI)¹⁰ or any other appropriate federal law enforcement agency for appropriate action consistent with the restrictions on information use at 8 CFR 236.23(e).¹¹ ICE must be notified if an alien already in ICE custody has had his or her DACA grant terminated. Aliens whose DACA grants are terminated and whom ICE declines to pursue, should be issued a notice to appear (NTA) according to current agency policy and consistent with restrictions on information use at 8 CFR 236.23(c)(2) and 8 CFR 236.23(e).¹²

⁹ See [8 CFR 236.23\(d\)\(1\)](#).

¹⁰ Consistent with the current Memorandum of Agreement (MOA) between USCIS and ICE. This MOA establishes procedures for the USCIS referral of national security, public safety, and immigration fraud cases to ICE.

¹¹ See [8 CFR 236.23\(e\)\(1\)](#) (prohibiting the use of information contained in a DACA request for the purpose of initiating immigration enforcement proceedings against the requestor, unless DHS is initiating immigration enforcement proceedings due to a criminal offense, fraud, a threat to national security, or public safety concerns).

¹² See [Issuance of Notices to Appear \(NTAs\) in Cases Involving Inadmissible and Deportable Aliens](#), PM-602-0187, issued February 28, 2025.

Immigration courts do not have jurisdiction to review the termination of a DACA grant. Thus, NTAs issued by USCIS following the issuance of a Notice of Termination should cite all applicable grounds of removability, including the “Present without Admission or Parole” (PWAP) charge pursuant to [INA 212\(a\)\(6\)\(A\)\(i\)](#), if applicable, and that the alien no longer has a valid grant of DACA.

Implementation

USCIS will update its Standard Operating Procedures within 14 days of the issuance of this guidance.

Use

This policy memorandum is intended solely for the guidance of USCIS personnel in the performance of their official duties, but it does not remove their discretion in making adjudicatory decisions. It may not be relied upon to create any right or benefit, substantive or procedural, enforceable under law or by any alien, individual, or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Additional Considerations

DACA is a form of enforcement discretion not to pursue the removal of certain aliens for a limited period. Even if the threshold DACA criteria at 8 CFR 236.22(b) are met, USCIS has the discretion to assess the alien’s circumstances and to weigh both positive and negative factors in the exercise of discretion during the adjudication of DACA requests to determine that any factor specific to an alien makes deferred action inappropriate.¹³ USCIS also has discretionary authority to terminate a previously approved DACA request at any time, whereby DACA requestors generally have an opportunity to address the cited grounds and discretionary reasons for termination in response to a NOIT.¹⁴ USCIS believes that the national security, public safety, and program integrity benefits that will result from this guidance are valuable and outweigh any potential reliance interests¹⁵ or other impacts DACA requestors, or others, affected by this guidance might claim.

¹³ See [8 CFR 236.22\(c\)](#).

¹⁴ See [8 CFR 236.23\(d\)\(1\)](#).

¹⁵ DACA recipients can claim no reliance interest in attempting to illegally possess or receive firearms. And as case law has demonstrated, DACA recipients should be aware that to do so is illegal and doing so has the potential to have significant negative consequences on a DACA recipient’s ability to remain in the United States. See *supra* FN1. See also USCIS DACA FAQ #6 which provides notice that the prohibition at 18 U.S.C. 922(g)(5) applies to DACA recipients (“Note: It is a federal crime for an alien who is “illegally or unlawfully in the United States,” among others, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition, or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. See [18 U.S.C. 922\(g\)\(5\)\(A\)](#). This prohibition applies to DACA recipients.”), available at <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions> (last updated Jan. 24, 2025).