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A. Purpose

This part describes USCIS policies for exercising prosecutorial discretion and the process for making such decisions, including grants of deferred action. The Immigration and Nationality Act (INA), as amended by the Homeland Security Act of 2002, charges the Secretary of Homeland Security with the administration and enforcement of the INA and all other laws related to the immigration and naturalization of aliens, with limited exception.^[1] USCIS has delegated authority through the Secretary, among other authorities, to exercise prosecutorial discretion on an individual case-by-case basis by granting deferred action to a particular alien who is otherwise removable from the United States.^[2]

B. Background

Congress provides for how aliens may legally enter and remain in this country and under what circumstances the government may grant discretionary relief from removal. The INA, as amended by the Homeland Security Act of 2002, vests the Secretary of Homeland Security with the administration and enforcement of the INA and to control, direct, and supervise all DHS employees who administer and enforce these laws, including exercising prosecutorial discretion in individual cases before DHS.^[3]

Prosecutorial discretion allows DHS, through its components, to make individual case-by-case decisions about whether to pursue, delay, or forego enforcement actions against aliens who are subject to removal under the INA.^[4]

The authority to grant deferred action is ultimately vested in the Secretary of Homeland Security.^[5] Congress explicitly provided for deferred action only in certain limited and unique circumstances.^[6] As with any discretionary decision, there is no bright line test for determining when to favorably exercise prosecutorial discretion. In many cases, because minds reasonably can differ, positive and negative factors may be afforded more or less evidentiary weight and lead the discretionary analysis to no single definitive outcome.

C. Legal Authorities

- [INA 103](#) – Powers and duties of the Secretary, Under Secretary and Attorney General
- [INA 242\(g\)](#) – Exclusive jurisdiction
- [INA 204](#) – Procedure for granting immigrant status

- [Delegation to the Bureau of Citizenship and Immigration Services](#) , Delegation 0150.1, signed June 5, 2003 (effective March 1, 2003)
- [Delegation to Director, United States Citizenship and Immigration Services, to Order Expedited Removal and to Enforce Immigration Laws \(PDF, 137.07 KB\)](#), Delegation 15006, signed May 2, 2025

Footnotes

[¹] See [INA 103\(a\)](#). See [Pub. L. 107-296 \(PDF\)](#), 116 Stat. 2135 (November 25, 2002).

[²] See [Delegation to the Bureau of Citizenship and Immigration Services](#) , Delegation 0150.1, signed June 5, 2003 (effective March 1, 2003) regarding USCIS’ authority to place aliens in removal proceedings, cancel jurisdiction, grant deferred action, and similar authorities. See [Delegation to Director, United States Citizenship and Immigration Services, to Order Expedited Removal and to Enforce Immigration Laws \(PDF, 137.07 KB\)](#), Delegation 15006, signed May 2, 2025.

[³] See [INA 103\(a\)](#).

[⁴] See *Heckler V. Chaney*, 470 U.S. 821, 831 (1985) (The Supreme Court has recognized “that an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.”).

[⁵] See [INA 103\(a\)](#).

[⁶] See the National Defense Authorization Act for Fiscal Year 2004, [Pub. L. 108-136 \(PDF\)](#), (November 24, 2003). See [INA 204\(a\)\(1\)\(D\)\(i\)\(II\)](#) and [INA 204\(a\)\(1\)\(D\)\(i\)\(IV\)](#).

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A. Prosecutorial Discretion

“Prosecutorial discretion” is the authority of an agency charged with enforcing a law to decide whether to enforce, or not to enforce, the law against someone. USCIS, like other law enforcement agencies,^[1] has prosecutorial discretion and exercises it every day. In the immigration context, the term applies not only to the decision to issue a Notice to Appear (NTA), but also to a broad range of other discretionary immigration enforcement decisions.

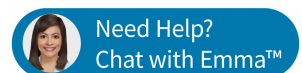
The “favorable exercise of prosecutorial discretion” means a discretionary decision not to assert the full scope of the INA enforcement authority as permitted under the law. The doctrine of prosecutorial discretion applies to enforcement decisions and not to affirmative acts of approval or grants of benefits under the INA or other applicable law that provides requirements for determining if the approval should be given. Simply put, prosecutorial discretion is not a substitute to grant benefits to an alien who is ineligible for that benefit under the INA.

Prosecutorial discretion can never be used to justify any action that is illegal or is not within the authority of the agency and only extends up to the substantive and jurisdictional limits of the law. USCIS’ discretionary authority does not modify or waive any legal requirements that apply to the action itself. Rather, it promotes the efficient and effective enforcement of the immigration laws and the interests of justice.

Exercising prosecutorial discretion does not lessen the agency’s commitment to enforce the INA nor is it an invitation to ignore the law. The Supreme Court “has recognized on several occasions over many years that an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.”^[2]

B. Who Exercises Prosecutorial Discretion

Prosecutorial discretion and adjudicative discretion are the two broad types of discretion that may be exercised in the context of immigration law.^[3] The scope of discretion is defined by what type of discretionary decision is being made. This chapter only discusses the exercise of prosecutorial discretion.



Prosecutorial discretion is exercised when an agency makes an independent decision with respect to enforcing the law and how to proceed with a request. USCIS, along with other DHS agencies, has the authority to exercise prosecutorial discretion related to immigration enforcement actions, including granting deferred action. Officers reviewing requests for deferred action exercise prosecutorial discretion when determining whether to deprioritize the alien from removal proceedings despite being removable.

USCIS retains the sole authority to exercise prosecutorial discretion for matters before USCIS, consistent with applicable laws and policy. USCIS exercises deferred action judiciously and only in compelling circumstances based on an individual case-by-case basis after thorough review by a USCIS officer. USCIS follows laws and regulations, where applicable, for certain benefit requests where USCIS exercises prosecutorial discretion through deferred action.

C. Deferred Action

Deferred action is the formal documenting of a decision to exercise prosecutorial discretion to not pursue removal action or deportation against an alien for a certain period of time.^[4] The traditional basis to defer action arises from the Executive Branch’s prosecutorial discretion, including its authority to use its limited resources to prioritize certain cases for enforcement over others.^[5] USCIS, through the authority granted by the Secretary of Homeland Security,^[6] may exercise a favorable use of prosecutorial discretion to temporarily not enforce the full scope of the INA against an alien through deferred action.

The authority to grant deferred action is extraordinary. USCIS may only grant deferred action judiciously in extraordinary and compelling cases.^[7] A demonstration of general hardship alone, common to all aliens facing removal, is insufficient for USCIS to grant deferred action. In other words, aliens must demonstrate extraordinary or compelling circumstances which are non-routine, persuasive, and unique. USCIS’ authority to grant deferred action to removable aliens who are otherwise ineligible for immigration benefits or relief is limited, as Congress expressly enacts the comprehensive federal statutory scheme for the regulation of immigration and naturalization in the INA.

Deferred action is not intended to circumvent the express will of Congress but rather to serve as an administrative remedy of last resort to an alien currently in the United States. As such, all appropriate administrative relief should generally be exhausted before considering deferred action and a USCIS officer is required to review and analyze these other avenues in a deferred action decision. Meaning if an alien is eligible for other relief under the INA, that should generally be pursued prior to considering deferred action. Deferred action is not a permanent solution to an alien’s removability or a mechanism for an alien to remain in the United States indefinitely.

An alien does not have a right to deferred action, unless specifically provided by law or regulation. A grant of deferred action does not confer immigration status, is not an admission to the United States, and does not excuse any past or future periods of unlawful presence or other inadmissibility grounds.^[8] A grant of deferred action does not provide a pathway to citizenship, and provides no other substantive rights, other than provided by Congress or regulation.^[9] Prosecutorial decisions including deferred action used in enforcement-related situations may appear as if DHS is granting a benefit, such as a grant of “deferred action” or a “stay of removal,” however, these actions are mechanisms for formalizing an exercise of prosecutorial discretion.

Footnotes

^[^ 1] See [90 FR 42797](#) (Sept. 5, 2025) (final rule).

[²] See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

[³] See Part E, Adjudications, Chapter 8, Discretionary Analysis, Section B, Overview of Discretion [[1 USCIS-PM E.8\(B\)](#)] for more information on broad types of discretion.

[⁴] See, for example, *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999).

[⁵] See [8 CFR. 274a.12\(c\)\(14\)](#) (referring to deferred action as “an act of administrative convenience to the government which gives some cases lower priority”).

[⁶] See [INA 103\(a\)](#).

[⁷] See Guidance on Deferred Action, DHS Memorandum, issued April 4, 2025.

[⁸] See Volume 8, Admissibility [[8 USCIS-PM](#)] for more information on inadmissibility grounds.

[⁹] See [Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children \(PDF\)](#), issued June 15, 2012.

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An alien who is subject to removal from the United States may request deferred action. However, there is no legal right to the exercise of prosecutorial discretion, and this includes deferred action, unless specifically provided by law or regulation.^[1] USCIS will consider requests for deferred action in accordance with the law and pursuant to the Secretary's authority to establish national immigration enforcement policies and priorities on a case-by-case basis. However, all requests for deferred action that are not specified in statute or regulation will be granted judiciously and only in compelling situations.^[2] USCIS cannot prevent a removable alien from requesting deferred action; however, officers are limited to granting deferred action to only the cases authorized by the Secretary's authority to administer and enforce immigration law.^[3]

A. Regulatory Deferred Action Requestors

Currently, DHS has specified regulations that provide a specific process for deferred action considerations. Even if provided by regulation, USCIS reviews requests for deferred action judiciously and on an individual case-by-case basis and in accordance with law.

1. Deferred Action for Childhood Arrivals (DACA)

Certain aliens who came to the United States under the age of 16 and meet other threshold guidelines,^[4] may request deferred action by filing Consideration of Deferred Action for Childhood Arrivals ([Form I-821D](#)) consistent with law and applicable court orders.^[5] Like all grants of deferred action, determinations to favorably exercise prosecutorial discretion to grant DACA are inherently discretionary and are made on an individual case-by-case determination based on the totality of the circumstances and thorough review of all background and security checks.^[6] Even when the alien appears to meet all regulatory threshold criteria,^[7] USCIS retains the discretion to assess the alien's circumstances and to determine that any factor specific to that alien makes deferred action inappropriate.^[8]

2. Victims of Criminal Activity

Certain victims of qualifying criminal activity who are helpful in the investigation or prosecution of the crime to which he or she was subject can apply for U nonimmigrant status by filing a Petition for U Nonimmigrant Status ([Form I-918](#)). Each fiscal year, USCIS can grant U nonimmigrant status to a

maximum of 10,000 aliens.^[9] If an alien is not granted U nonimmigrant status solely due to the numerical cap, USCIS places that alien on a waiting list.^[10] Under existing regulations, USCIS grants deferred action or parole to aliens and qualifying family members while they are on the waiting list.^[11] However, USCIS may remove the alien and his or her qualifying family members from the waiting list and terminate deferred action or parole as a matter of discretion,^[12] for reasons including, but not limited to, conduct that was not disclosed to USCIS relating to his or her petition for U nonimmigrant status or for misrepresentations of material facts or other removable offenses. Aliens with a pending petition for U nonimmigrant status may be subject to removal, depending on the unique circumstances of each individual case consistent with law.^[13]

3. Victims of Human Trafficking

Certain victims of severe forms of trafficking in persons who assist law enforcement in the investigation or prosecution of trafficking and who would suffer extreme hardship involving unusual and severe harm if they were removed from the United States, among other requirements, can apply for T nonimmigrant status by filing an Application for T Nonimmigrant Status ([Form I-914](#)). If USCIS determines the alien's application for T nonimmigrant status is bona fide, USCIS may consider the alien as well as qualifying family members for deferred action.^[14] USCIS retains full discretion to assess the individual circumstances and to determine whether deferred action is appropriate based on the totality of facts and circumstances.

4. A-3 and G-5 Visa Holders

While no regulation specifically identifies A-3 and G-5 visa holders as aliens who can request deferred action, a statute calls for their inclusion in categories under victims of criminal activity or trafficking, if applicable.^[15] A-3 and G-5 visa holders are nonimmigrant attendants, servants, or personal employees of ambassadors, diplomats, consular officers, foreign government officials, or international organization officers. USCIS may exercise prosecutorial discretion favorably to grant deferred action to these aliens on an individual case-by-case basis if he or she has filed litigation against their employer for violation of the terms of his or her employment contract or conditions related to human trafficking and similar criminal violations.^[16]

5. Violence Against Women Act (VAWA)

Approved Violence Against Women Act (VAWA) self-petitioners and his or her derivative beneficiaries may be considered for deferred action on an individual case-by-case basis. USCIS retains the discretion to assess the alien's circumstances and to determine that any factor specific to that alien makes deferred action appropriate.

B. Non-Regulatory Deferred Action Requestors

USCIS may still, in its discretion, review deferred action requests from removable aliens even if not provided for by statute or regulation. However, USCIS must review requests not provided by regulation judiciously, as a grant of deferred action is an extraordinary use of prosecutorial discretion. USCIS must take care when reviewing requests not provided by regulation, as to not circumvent the express will of Congress. Non-regulatory requests before USCIS must be compelling and scrutinized in accordance with law.^[17]

U.S. Armed Services Members and Applicable Family Members [Reserved]

Footnotes

[¹] See Guidance on Deferred Action, DHS Memorandum, issued April 4, 2025.

[²] See Guidance on Deferred Action, DHS Memorandum, issued April 4, 2025.

[³] See the Homeland Security Act of 2002, [Pub. L. 107-296 \(PDF\)](#), 116 Stat. 2135 (November 25, 2002).

[⁴] See [8 CFR 236.22\(b\)](#).

[⁵] See [8 CFR 236.21](#).

[⁶] See [8 CFR 236.22\(c\)](#).

[⁷] See [8 CFR 236.22\(b\)](#).

[⁸] See [8 CFR 236.22\(c\)](#).

[⁹] See [8 CFR 214.14\(d\)\(1\)](#).

[¹⁰] See Volume 3, Humanitarian Protection and Parole, Part C, Victims of Crimes, Chapter 6, Waiting List [[3 USCIS-PM C.6](#)] for more information on eligibility for placement on the U nonimmigrant status waiting list and related grants of deferred action.

[¹¹] See [8 CFR 214.14\(d\)\(2\)](#).

[¹²] See [8 CFR 214.14\(d\)\(3\)](#).

[¹³] See [8 CFR 214.14\(c\)\(1\)\(ii\)](#).

[¹⁴] See [8 CFR 214.205\(e\)](#). See Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 6, Bona Fide Determinations [[3 USCIS-PM B.6](#)] for more information on the bona fide determination process for applicants for T nonimmigrant status and related grants of deferred action. The bona fide determination process generally applies to applications for T nonimmigrant status filed on or after August 28, 2024, when the T Final Rule went into effect. However, if an application was pending as of that date and additional evidence is required to establish eligibility for principal T nonimmigrant status, USCIS conducts a bona fide review.

[¹⁵] See William Wilberforce Trafficking Victims Protection Reauthorization (TVPR) Act of 2008, [Pub. L. 110-457](#) (December 23, 2008).

[¹⁶] See William Wilberforce Trafficking Victims Protection Reauthorization (TVPR) Act of 2008, [Pub. L. 110-457](#) (December 23, 2008).

[¹⁷] Congress explicitly provided for deferred action in certain limited and unique circumstances. See, for example, National Defense Authorization Act for Fiscal Year 2004, [Pub. L. No. 108-136 \(PDF\)](#), section 1703(c)(1)(A), (c)(2), 117 Stat. 1693, 1694-95 (November 24, 2003) and [INA 204\(a\)\(1\)\(D\)\(i\)\(II\)](#), [INA 204\(a\)\(1\)\(D\)\(i\)\(IV\)](#). The fact that Congress expressly authorized deferred action in those circumstances only underscores how extraordinary deferred action is in other circumstances. See *Cf. Youngstown Sheet & Tube Co. v Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring) (“When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb.”).



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In the absence of a specific contradictory regulatory provision, this policy governs deferred action requests. Deferred action is exercised judiciously and only in extraordinary circumstances where a USCIS officer makes an independent case-by-case decision based on the totality of the circumstances. [\[1\]](#)

A. Requesting Deferred Action Provided by Regulation

A request for deferred action can be made by the alien or his or her representative by filing the applicable form and with any applicable fees. [\[2\]](#) Deferred action for T and U nonimmigrants and VAWA do not require a separate form or filing other than the underlying form type. [\[3\]](#)

1. Request for DACA

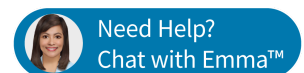
An alien requests DACA by filing Consideration of Deferred Action for Childhood Arrivals ([Form I-821D](#)) with USCIS according to the form instructions. [\[4\]](#) USCIS has exclusive jurisdiction to consider DACA requests, including for aliens in removal proceedings, who are subject to a final order of removal or order of voluntary departure, and aliens in immigration detention. However, USCIS lacks authority to grant requests for DACA if the alien is in U.S. Immigration and Customs Enforcement (ICE) detention, unless the alien is released prior to USCIS's decision. [\[5\]](#)

2. Victims of Criminal Activity

Once USCIS has determined a [Form I-918](#) petition establishes eligibility in all respects, but for the statutory cap, and a petitioner is placed on the waiting list, [\[6\]](#) USCIS will exercise prosecutorial discretion favorably to grant deferred action. [\[7\]](#) The alien does not need to file a separate form. [\[8\]](#)

3. Victims of Human Trafficking

Once USCIS has determined a [Form I-914](#) application is bona fide, on a case-by-case basis, USCIS will determine whether to favorably exercise prosecutorial discretion to grant deferred action. [\[9\]](#) The alien does not need to file a separate form. [\[10\]](#)



4. VAWA

Approved self-petitioners and his or her derivatives may be considered on an individual case-by-case basis for deferred action.^[11] The alien does not need to file a separate form.^[12]

B. Requesting Deferred Action Not Provided by Regulation

Deferred action requests not provided by statute or regulation are made by submitting Biographic Information (for Deferred Action) ([Form G-325A](#)) and any supporting evidence.^[13] USCIS retains discretion to consider and grant requests for deferred action if not provided by statute, regulation, or applicable court orders.

If the alien is currently in removal proceedings before an immigration judge, which includes proceedings that have been administratively closed and cases in which the alien has an unexecuted administratively final removal order, the requestor should direct his or her request to ICE.^[14] USCIS will generally not consider granting deferred action for an alien in removal proceedings.

Footnotes

^[^ 1] See Guidance on Deferred Action, DHS Memorandum, issued April 4, 2025.

^[^ 2] For information on how to submit a request for Deferred Action for Childhood Arrivals (DACA), see Subsection 1, Request for DACA [[1 USCIS-PM I.4\(A\)\(1\)](#)].

^[^ 3] See Chapter 3, Who Can Request Deferred Action [[1 USCIS-PM I.3](#)].

^[^ 4] See generally, [Consideration of Deferred Action for Childhood Arrivals](#).

^[^ 5] See [8 CFR 236.23\(a\)\(1\)](#) and [8 CFR 236.23\(a\)\(2\)](#).

^[^ 6] See Volume 3, Humanitarian Protection and Parole, Part C, Victims of Crimes, Chapter 6, Waiting List [[3 USCIS-PM C.6](#)].

^[^ 7] See [8 CFR 214.14\(d\)\(2\)](#).

^[^ 8] See Volume 3, Humanitarian Protection and Parole, Part C, Victims of Crimes, Chapter 5, Bona Fide Determination Process [[3 USCIS-PM C.5](#)] and Chapter 6, Waiting List [[3 USCIS-PM C.6](#)] for more information.

^[^ 9] See [8 CFR 214.205\(c\)](#).

^[^ 10] See Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 6, Bona Fide Determinations [[3 USCIS-PM B.6](#)] for more information.

^[^ 11] See [INA 103\(a\)](#), [INA 204\(a\)\(1\)\(D\)\(i\)\(II\)](#), and [INA 204\(a\)\(1\)\(D\)\(i\)\(IV\)](#). See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

^[^ 12] See Volume 3, Humanitarian Protection and Parole, Part D, Violence Against Women Act, Chapter 5, Adjudication [[3 USCIS-PM D.5](#)] for more information.

^[^ 13] See the instructions for [Form G-325A](#) for more information on other categories of deferred action requests.

[^ 14] If an alien in removal proceedings files a request for deferred action with USCIS on [Form G-325A](#), USCIS will deny the request. The alien may request deferred action from ICE.

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While this Policy Manual part describes general deferred action procedures by USCIS, each deferred action request is considered on an individual case-by-case basis based on the totality of the circumstances and limits the positive exercising of prosecutorial discretion judiciously.

Deferred action is an extraordinary form of relief and should be considered a last resort for the alien making the request. Prosecutorial discretion and deferred action must never be used to circumvent the express will of Congress. If DHS previously considered the alien for a discretionary immigration benefit or relief expressly authorized by statute but declined to grant it, USCIS should cautiously consider whether a positive exercise of deferred action would circumvent the express will of Congress.

USCIS rigorously enforces our nation's immigration laws and does not exempt classes or categories of removable aliens from potential enforcement action, including the issuance of Notices to Appear (NTA). Unless required by law, USCIS exercises prosecutorial discretion in very limited and compelling instances after considering all USCIS and DHS information and guidance, the individual facts presented, and any DHS interest implicated, including federal court litigation-related considerations and deconfliction with law enforcement priorities or other agencies. USCIS retains discretion to determine that a unique case merits a favorable exercise of prosecutorial discretion to forego enforcement action when appropriate and lawful.

Deferred action requests are only considered in extraordinary and compelling situations. In general, the common hardships that any alien facing removal may experience or endure will be insufficient to establish that a favorable exercise of prosecutorial discretion is warranted. Historically, deferred action has been used as a remedy of last resort. If Congress did not specifically provide relief from removal, officers should exercise his or her discretion favorably in limited situations in the totality of the circumstances.

A. Threshold Criteria

Upon proper filing, each deferred action request is thoroughly and independently reviewed to determine whether to exercise prosecutorial discretion to defer removal. Officers must review individual case files, conduct biometric and biographical background checks, and determine whether the alien has demonstrated threshold criteria for requesting deferred action.

Prior to a determination of whether an alien warrants a favorable exercise of prosecutorial discretion, in certain circumstances, an alien must also meet threshold criteria to be considered for such a request. The threshold is used in particular cases to provide clarity and consistency in adjudication for categories of individuals identified by law or regulation.

The threshold criteria for victims of crimes is to have a bona fide petition for U nonimmigrant status pending with USCIS, or to establish eligibility for U nonimmigrant status in all respects but for the statutory cap. The threshold criteria for victims of trafficking is to have a bona fide application for T nonimmigrant status pending with USCIS. Additionally, for VAWA self-petitioners, the underlying benefit request also needs to be approved.^[1]

As matter of policy and except as specified otherwise by regulation, USCIS generally will not consider granting deferred action to aliens who are in removal proceedings. The purpose of deferred action is not to permanently avoid removal but to receive temporary relief from removal, including being placed into removal proceedings.^[2]

DACA-Specific Threshold Criteria

To be considered for DACA, an alien must first establish that he or she meets the following threshold criteria and merits a favorable exercise of discretion:^[3]

- Entered the United States prior to attaining 16 years of age;
- Continuously resided in the United States since June 15, 2007, up to the date of filing;
- Physically present in the United States on June 15, 2012, and at the time of filing the request for DACA with USCIS;
- Had no lawful immigration status on June 15, 2012, and at the time of filing;
- Currently enrolled in school, graduated or obtained a certificate of completion from a U.S. high school, obtained a GED certificate or equivalent, or is an honorably discharged veteran of the U.S. Coast Guard or Armed Forces;
- Not been convicted of a felony, a misdemeanor as defined in the DACA regulations,^[4] or three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety; and
- Born on or after June 16, 1981, and is at least 15 years of age at the time of filing, unless he or she is in removal proceedings, has a final order of removal, or has a voluntary departure order.

This threshold criteria is specific to DACA and not all deferred action requests. However, even if the threshold DACA criteria 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 whether any factor specific to an alien makes deferred action inappropriate.^[5]

B. Analyze Whether Deferred Action Should be Granted as a Matter of Prosecutorial Discretion

If the alien requesting deferred action has filed a proper application or request and has met all applicable threshold criteria, USCIS officers must determine whether the alien has demonstrated that they warrant a favorable exercise of discretion. USCIS officers do this by evaluating all positive and negative factors present in the alien's case in the totality of the circumstances.

USCIS considers the following non-exhaustive factors when deciding whether to exercise prosecutorial discretion to grant deferred action:

- Whether the alien has been considered for some other discretionary status expressly authorized by Congress;^[6]
- Whether the alien's continued presence in the United States, on balance, provides a benefit to the United States, its citizens, and its interests;
- Whether the alien's continued presence in the United States is needed for an ongoing investigation or enforcement action;
- Whether there are unique compelling circumstances warranting a grant, such as the need for life saving medical treatment in the United States by the alien or the alien's minor child;
- Whether the alien possesses the financial means to support himself or herself;
- Whether there is any compelling reason that the alien cannot or should not return to his or her home country or be removed to another safe country;
- The alien's immigration history, including the degree to which the alien has broken U.S. immigration law;
- Extent to which identity can be established and aliases are disclosed;
- Criminal history, including the nature and severity of any criminal conduct, as well as the time elapsed since the offense occurred and evidence of rehabilitation, and the actual sentence or fine that was imposed, as an indicator of the seriousness attributed to the conduct by the court. Other factors relevant to assessing criminal history include the alien's age at the time the crime was committed and whether or not he or she is a repeat offender;
- Public safety or national security concerns;^[7]
- Existence of an unexecuted final removal, deportation, or exclusion order;
- Moral depravity or criminal tendencies reflected by a single serious crime or an ongoing or continuing criminal record, with attention to the nature, scope, seriousness, and recent occurrence of criminal activity;^[8]
- Whether the alien has endorsed, promoted, supported, or otherwise espoused anti-American views or the views of a terrorist organization or group (including in social media content by, or involving an alien). This includes organizations who support or promote anti-American ideologies or activities, antisemitic terrorism, antisemitic terrorist organizations, antisemitic ideologies, or has engaged in physical harassment of any person in furtherance of the organization or group;^[9]
- Relevant country-specific facts and circumstances, such as insufficient vetting and screening information;^[10] and
- Previous instances of fraud or false testimony in dealings with USCIS or any government agency.

C. Regional Director Review

When officers encounter deferred action requests in the field, he or she must determine if the alien is eligible for deferred action and then recommend the grant to the Field Office Director.

A USCIS Field Office Director may, in his or her discretion, recommend deferred action. Such recommendation is made to the relevant District Director. If the District Director concurs with the recommendation, the final determination to defer removal action rests with the USCIS Regional Director.^[11]

D. Screening and Vetting

For certain form types, USCIS requires biometrics (for example, signature, photograph, and fingerprints) as part of the adjudication. In those cases, aliens are required to submit biometrics during the initial processing of the request. Even for requests which do not require submission of biometrics, USCIS still may require biometrics on a case-by-case basis through individual notice. Considering deferred action is an extraordinary exercise of prosecutorial discretion, USCIS may require requestors to appear for biometric collection.^[12]

E. Termination of Deferred Action

USCIS has the authority to terminate deferred action at any time in its discretion.^[13] USCIS generally notifies the alien, in writing, of the termination of deferred action through an NTA, unless USCIS is legally required to send another notice in advance, including a Notice of Intent to Terminate (NOIT). USCIS may, in its discretion, issue an NTA to initiate removal proceedings at any time, in accordance with law. USCIS may, where appropriate and in its discretion, issue a Notice of Termination of Deferred Action, regardless of whether an NTA has been issued.

Termination of DACA

Prior to terminating DACA, USCIS will generally provide a NOIT and provide an opportunity to respond to the notice. However, USCIS may terminate DACA without issuance of a NOIT and an opportunity to respond if the DACA recipient is convicted of a national security-related offense^[14] or an egregious public safety offense.^[15]

USCIS may also issue an NTA, and initiate removal proceedings.^[16] Information contained in a request for DACA related to the DACA requestor will not be used by USCIS for the purpose of NTA issuance unless DHS is initiating immigration enforcement proceedings against the requestor due to a criminal offense, fraud, a threat to national security, or public safety concerns.^[17]

Footnotes

^[^ 1] See Chapter 4, Process for Requesting Deferred Action, Section A, Requesting Deferred Action Provided by Regulation [[1 USCIS-PM I.4\(A\)](#)] for more information on the specific benefit requests needed for the threshold eligibility determination.

^[^ 2] See *Matter of L-A-B-R*, 27 I&N Dec. 405, 416 (A.G. 2018). See also *Matter of B-N-K-*, 29 I&N Dec. 96, 99 (BIA 2025) (noting the significant public interest in bringing immigration proceedings “to a close as promptly as is consistent with the interest in giving the adversaries a fair opportunity to develop and present their respective cases” (quoting *INS v. Abudu*, 485 U.S. 94, 107 (1988))).

^[^ 3] See [8 CFR 236.22\(b\)](#).

^[^ 4] See [8 CFR 236.22\(b\)\(6\)](#).

^[^ 5] See [8 CFR 236.22\(c\)](#).

^[^ 6] If DHS cannot or has chosen not to grant that other relief, DHS should be very cautious before using prosecutorial discretion to circumvent the express will of Congress.

^[^ 7] See [Issuance of Notices to Appear \(NTAs\) in Cases Involving Inadmissible and Deportable Aliens \(PDF, 345.39 KB\)](#), PM-602-0187, issued February 28, 2025.

^[^ 8] The officer should not go behind the record of conviction to reassess an alien’s ultimate guilt or innocence, but rather inquire into the circumstances surrounding the commission of the crime in order

to determine whether a favorable exercise of discretion is warranted. See [Matter of Edwards \(PDF\)](#), 20 I&N Dec. 191, 197 (BIA 1990).

[^ 9] USCIS uses the definitions at [INA 313\(a\)](#) when identifying and determining anti-American organizations, views, activities, and ideologies. See Part E, Adjudications, Chapter 8, Discretionary Analysis, Section C, Adjudicating Discretionary Benefits [[1 USCIS-PM E.8\(C\)](#)].

[^ 10] Insufficient vetting and screening information may involve insufficient identity documents or inability to rely on documentation or information provided by the specified countries for identity purposes or determining criminal history or ties to criminal or terrorist organizations. For more information, see Presidential Proclamation 10949, Restricting the Entry of Foreign Nationals To Protect the United States From Foreign Terrorists and Other National Security and Public Safety Threats, [90 FR 24497 \(PDF\)](#). (June 4, 2025).

[^ 11] See [Delegation to the Bureau of Citizenship and Immigration Services](#) , Delegation 0150.1, signed June 5, 2003 (effective March 1, 2003). Delegates highest ranking officials in USCIS authority to grant deferred action.

[^ 12] See [8 CFR 103.2\(b\)\(9\)](#) and [8 CFR 103.16](#).

[^ 13] See *Heckler v Chaney*, 470 U.S. 821 (1985).

[^ 14] See [INA 212\(a\)\(3\)\(B\)\(iii\)](#), [INA 212\(a\)\(3\)\(B\)\(iv\)](#), or [INA 237\(a\)\(4\)\(A\)\(i\)](#).

[^ 15] See [8 CFR 236.23\(d\)\(1\)](#).

[^ 16] See [8 CFR 236.21\(c\)\(1\)](#).

[^ 17] See [8 CFR 236.23\(e\)\(1\)](#).