



**U.S. Customs and
Border Protection**

September 6, 2017

MEMORANDUM FOR:

All Chief Patrol Agents
All Directorate Chiefs

FROM:

Carla L. Provost
Acting Chief
U.S. Border Patrol

SUBJECT:

Guidance on the Acting Secretary's Rescission of the
Memorandum of June 15, 2012, Establishing DACA

On September 5, 2017, the Acting Secretary of Homeland Security issued a memorandum rescinding the June 15, 2012, memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who came to the United States as Children," which established a program known as the Deferred Action for Childhood Arrivals (DACA). The Attorney General sent the Department a letter on September 4, 2017, explaining that although such an "open-ended circumvention of immigration laws [by DACA] was an unconstitutional exercise of authority," the Department should still "consider an orderly and efficient wind-down process [of the program]."

As part of that orderly wind-down process, USCIS will no longer accept new DACA applications after September 5, 2017. Documents from current beneficiaries that have been accepted as of September 5, 2017, and from current beneficiaries whose benefits will expire between September 5, 2017, and March 5, 2018, that have been accepted as of October 5, 2017, will be processed. USCIS will reject all requests to renew DACA and associated applications for employment authorizations filed after October 5, 2017.

Agents are reminded that, consistent with existing guidance, all individuals who are encountered by U.S. Border Patrol and are believed to have entered illegally or are out of status at the time of the encounter must be appropriately processed, including all appropriate system checks. Although individuals may have been given deferred action under the DACA program, agents are reminded that deferred action is not, and even under DACA was not, lawful immigration status. Thus, agents must determine for any individual, consistent with the guidance set forth below, whether removal proceedings are appropriate.

When an individual who claims to have DACA is encountered, an agent must first process the individual through the e3 system. An individual who has a pending application (that is, it has been accepted by USCIS for processing) for DACA or DACA renewal should be processed as if they have deferred action under DACA, absent derogatory information. If the individual claims to have DACA but does not have documentation of DACA physically available at the time of

processing, the agent should either run a CLAIMS3 query or, if the agent does not have access to CLAIMS3, the agent should contact USCIS directly. If an agent determines that the individual does have deferred action through DACA, and that there is no derogatory information indicating other processing is appropriate, the individual should be permitted to depart the Border Patrol facility upon approval by the Chief Patrol Agent or his or her designee. If an agent determines that an individual does not have deferred action (through DACA or otherwise), the individual should be processed according to normal procedures.

Where an agent finds derogatory information indicating that deferred action under DACA may no longer be appropriate, the agent should contact USCIS to determine if the deferred action can be terminated immediately. Even if the deferred action cannot be terminated immediately, the agent may process the individual for removal.

Individuals who may previously have been eligible for DACA but who, as of September 6, 2017, do not have a DACA application accepted for processing by the Department, should be processed according to normal procedures.

The rescission of DACA does not alter in any way the normal processing requirements for those who are encountered without lawful basis to enter or remain in the United States. For instance, the rescission of the DACA guidance does not affect the requirements for those who claim fear of return. Similarly, agents must still comply with the requirements of the Trafficking Victims Protection Reauthorization Act (TVPRA), *Flores*, and all other legal and policy requirements in place.

This Guidance is not intended to, and does not, create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does it create any right of review in an administrative, judicial, or any other proceeding.