

Explainer: USCIS Policy Alert on Deferred Action and Possible Implications for DACA

May 2026

Overview

On May 8, 2026, U.S. Citizenship and Immigration Services (USCIS) issued a new Policy Alert titled [*Deferred Action as an Extraordinary Use of Prosecutorial Discretion*](#). The alert signals that USCIS has issued updated policy guidance in the USCIS Policy Manual emphasizing that deferred action is a limited and extraordinary form of prosecutorial discretion that should only be granted in compelling individual cases.

Although the policy alert addresses deferred action more broadly, this resource focuses primarily on the potential implications for Deferred Action for Childhood Arrivals (DACA), including how USCIS may apply discretion in pending and future DACA renewals.¹

Key Takeaways

- The guidance does not rescind the DACA program, change existing DACA eligibility criteria, or revoke current grants of DACA. However, it signals a potentially more restrictive approach to how USCIS may exercise discretion when adjudicating pending and future DACA requests.
- The guidance clarifies that even if a person meets the threshold DACA criteria, USCIS has the discretion to assess the newly created criteria to determine whether deferred action should be granted.
- For pending DACA renewals: This guidance took effect immediately and applies to requests that were pending or filed on or after May 8, 2026. That includes DACA renewal requests that had already been filed but had not yet been adjudicated as of that date. If you have a renewal pending or upcoming, speaking with an attorney is advisable.
- USCIS characterizes deferred action as an “extraordinary” use of prosecutorial discretion.
- The policy alert outlines discretionary factors USCIS officers consider when evaluating whether deferred action should be granted.
- The agency rejects broad categorical grants of deferred action unless specifically authorized by law or regulation.
- USCIS argues that an individual’s reliance interests in obtaining or maintaining deferred action do not outweigh the government’s interest in “ensuring the integrity of the legal immigration system, national security, and public safety.”

¹ This resource is provided for informational purposes only and does not constitute legal advice. Individuals should consult with qualified counsel regarding their specific circumstances.

- Individuals who have factors that could be viewed unfavorably under the new guidance may want to work with a legal practitioner to address those concerns when submitting their renewal.

What Is Deferred Action?

Deferred action is a decision by the Department of Homeland Security (DHS) to exercise prosecutorial discretion not to pursue removal action or deportation against a person for a limited period.

USCIS Framing of Prosecutorial Discretion

USCIS emphasizes that deferred action should:

- Be used only in “compelling” or “extraordinary” circumstances;
- Be considered on an individualized, case-by-case basis; and
- Not be granted broadly to categories or groups of people unless specifically required by law or regulation.

Who Can Request Deferred Action

Any individual who may be subject to removal proceedings may request deferred action. The guidance states that requests for deferred action that are not expressly authorized by statute or regulation will be granted judiciously and only in compelling circumstances.

Deferred Action for Childhood Arrivals (DACA) is an existing process set in regulations through which individuals who meet certain criteria may request deferred action.²

Potential Impact for Immigrant Communities

The new USCIS policy may affect individuals who previously relied on deferred action connected to pending immigration benefit requests or humanitarian protections, such as U-Visas, T-Visas, VAWA self-petitioners, and others. USCIS acknowledges that some individuals may have relied on deferred action to pursue employment, education, housing, transportation, or community stability. However, the agency maintains that deferred action is temporary in nature and that any reliance interests are outweighed by the government’s stated interests.

Importantly, USCIS reaffirmed that deferred action remains available under appropriate circumstances.

² The guidance also describes other regulatory-based deferred action processes, including for victims of qualifying criminal activity seeking U nonimmigrant status, victims of human trafficking seeking T nonimmigrant status, certain Violence Against Women Act (VAWA) self-petitioners, and certain A-3 and G-5 visa holders. Deferred action has been used for decades in these contexts, as well as for humanitarian purposes, such as allowing a parent to remain in the United States to care for a seriously ill child.

Key Factors USCIS May Consider in Deferred Action Requests

The policy alert adds a new Part I, titled *Deferred Action*, to Volume 1 of the USCIS Policy Manual. Within this new section, [Chapter 5, *Deferred Action Determinations*](#), outlines factors USCIS officers consider when evaluating whether deferred action should be granted.

Some of these factors reflect considerations that have appeared in prior discretionary immigration contexts; however, it is unclear how these factors may be interpreted and implemented in practice.

USCIS states that officers consider a broad range of discretionary factors, including:

- Whether the individual has been considered for another discretionary immigration status authorized by Congress;
- Whether the individual's continued presence in the United States provides a benefit to the United States, its citizens, or its interests;
- Whether the individual's presence is needed for an ongoing investigation or enforcement action;
- Whether there are unique compelling humanitarian circumstances, such as the need for life-saving medical treatment;
- Financial ability to support oneself;
- Whether there are compelling reasons the person cannot or should not return to their home country or another safe country;
- Immigration history and the extent to which the person has violated immigration law;
- Whether identity can be established and aliases have been disclosed;
- Criminal history, including the seriousness of offenses, evidence of rehabilitation, age at the time of the offense, and repeat offenses;
- Public safety or national security concerns;
- The existence of a final order of removal, deportation, or exclusion;
- Conduct USCIS characterizes as reflecting "moral depravity" or ongoing criminal tendencies;
- Statements or activities, including social media activity, that DHS interprets as supporting anti-American, antisemitic, or terrorist-related organizations or ideologies;
- Country-specific concerns, including vetting or screening limitations; and
- Previous instances of fraud or false testimony in interactions with USCIS or other government agencies.

The guidance also notes that these factors are reviewed under a totality of the circumstances framework and may be weighed differently depending on the facts of each case. Advocates and practitioners should closely monitor how these standards are interpreted and applied in practice, particularly given concerns about subjectivity, due process, and the potential chilling effect on speech, advocacy, or community engagement.

Implications for DACA

The guidance does not change the existing DACA eligibility criteria or affect current grants of DACA. However, it signals a possibly more restrictive approach to how USCIS may exercise discretion when adjudicating both pending and future DACA requests. That said, the new policy notes that even when an applicant meets the threshold DACA criteria, USCIS retains discretion to evaluate the individual's circumstances. During adjudication, the agency may weigh the positive and negative factors listed above to determine whether anything specific to the applicant makes deferred action inappropriate.

This means that because DACA is a form of deferred action grounded in prosecutorial discretion, meeting the threshold DACA criteria alone does not guarantee approval or renewal.³ USCIS officers must still determine whether an individual warrants a favorable exercise of discretion based on the totality of the circumstances. The guidance states that officers must evaluate the totality of the circumstances by weighing all relevant positive and negative factors present in the individual's case.

This is problematic because some DACA recipients may satisfy the threshold guidelines yet still have negative factors in their case. For instance, many recipients have prior removal orders or have been politically outspoken in ways this administration could view unfavorably.

While we continue to assess how this new policy will affect DACA recipients in practice, individuals who have factors that could be viewed unfavorably under the new guidance may want to work with a legal practitioner to address those concerns when submitting their renewal.

Why This Matters

While deferred action remains available, USCIS is making clear that it intends to limit its use to exceptional cases unless otherwise required by statute or regulation. For DACA recipients, this guidance comes amid ongoing DACA litigation that has already narrowed access to the program. Although USCIS continues to process DACA renewal requests under current court orders, the future of DACA remains uncertain, and initial requests continue to be restricted.

This policy update also comes amid ongoing [renewal delays](#) and broader [federal actions](#) that are already creating [uncertainty](#) for Dreamers, undocumented students, and the institutions and communities that support them. Even if the guidance does not formally change DACA eligibility

³ DACA has its own threshold eligibility criteria separate from other forms of deferred action. To request DACA, individuals generally must have arrived in the United States before age 16; continuously resided in the United States since June 15, 2007; been physically present on June 15, 2012 and at the time of filing; lacked lawful status on June 15, 2012; meet certain education or military service requirements; and not have disqualifying criminal history or pose a public safety or national security concern. Applicants also must have been born on or after June 16, 1981 and be at least 15 years old at the time of filing. The [USCIS FAQs on DACA](#) note that: "As the Department of Homeland Security (DHS) continues to focus its enforcement resources on those who pose the greatest threat to homeland security, DHS will exercise prosecutorial discretion as appropriate to ensure that enforcement resources are not expended on individuals who do not fall into this category, such as individuals who came to the United States as children and meet other key guidelines."

criteria, a more restrictive discretionary framework could heighten anxiety, complicate renewal planning, and further destabilize access to work authorization, educational continuity, and long-term career pathways.

Advocates, legal service providers, higher education institutions, and impacted communities should closely monitor how this policy is implemented and whether it affects pending and future DACA renewal requests.

Institutions that observe emerging patterns affecting DACA recipients or undocumented students are encouraged to share those trends with the Presidents' Alliance to help inform our monitoring, resources, and federal advocacy. You can share information via email to federalpolicyteam@presidentsalliance.org.