

On July 28, 2020, the Acting Secretary of Homeland Security Chad F. Wolf issued a memo limiting the DACA program. An implementation memo was issued on August 21, 2020 by Deputy Director of Policy Joseph Edlow. These memos follow a June 2020 U.S. Supreme Court decision, which found that the Trump administration's attempt to terminate the DACA program was unlawful. This advisory is not intended as legal advice but rather to provide information based on the recent DHS memos. Individuals should seek a legal consultation from a qualified immigration attorney or DOJ accredited representative for a full assessment of their individual case.

1. What do the Wolf memo and Edlow memo say?

In the July 28, 2020 memo (hereinafter "Wolf memo"), Acting Secretary Wolf announced the agency's intent to do an extensive review of the DACA program to determine whether the DACA program should continue given this administration's policy priorities. The Wolf memo laid out how DHS will treat DACA requests during this time of review of the DACA program.

In the August 21, 2020 memo (hereinafter "Edlow memo"), Deputy Director Edlow provides additional guidance to USCIS on the implementation of the changes to the DACA policy outlined in the Wolf Memo.

2. I have a pending application to renew my DACA benefits with USCIS. How do these memos affect my pending application?

USCIS will continue to adjudicate all properly filed DACA renewal requests. However, the Wolf and Edlow memos indicate that the length of DACA benefits approved following an application for renewal will be reduced from two years to one year.

There is some possibility that USCIS may give greater scrutiny to renewal applications. The Wolf Memo says that USCIS renewals will be considered on a case-by-case basis; USCIS has always said that it adjudicates DACA cases on that basis, but the language may suggest a shift in DACA renewal adjudication. We will know more in coming weeks and months.

If your request has been pending for more than 105 days, you or your legal representative can submit a status inquiry via phone by calling 1-800-375-5283 or online via U.S. Citizenship and Immigration Service's ("USCIS") inquiry submission platform: <https://egov.uscis.gov/e-request>.

If that does not yield a result, you or your legal representative may wish to consider seeking congressional assistance. In Illinois, Senators [Duckworth](#) and [Durbin](#) each have the request process located on their congressional website.

3. My DACA has expired or is close to expiring. Can I still apply to renew my DACA?

If you currently have DACA, the Edlow memo indicates that you should file your DACA renewal application when you have between 120 to 150 days left on your current period of DACA. If you are within this filing window, we recommend that you file your renewal application as soon as possible. USCIS will generally reject requests received more than 150 days before the current grant of DACA expires.

While the Supreme Court decided that the current administration's termination of the DACA program was unlawful, the Supreme Court noted that the administration could issue a new decision seeking to terminate the DACA program at any time. The issuance of these memos signals a new notice that DACA program termination is possible and could occur at any time. As such, if you are interested, eligible, and within the timeframe to renew, you may wish to do so as soon as possible. If you are interested in attending one of our upcoming, free DACA renewal clinics, you can register [here](#). We are updating the calendar frequently with new clinic offerings.

If your DACA expired more than one year ago or it was previously terminated, you can submit an initial DACA application. If you are in this position, please schedule a DACA consultation by calling 312-660-1370 on Tuesdays or Thursdays or emailing nijcild@heartlandalliance.org.

4. I have never had DACA, can I apply for DACA now?

These memos indicate that USCIS will reject applications for initial DACA benefits for those who have never had the benefits in the past. There may be legal arguments that USCIS should continue to accept initial DACA applications, but first-time, initial DACA applications will not be approved while these memos are in force. Individuals who believe they qualify as initial – or first time – DACA applicants and wish to explore the possibility of litigation should consult with qualified counsel to assess the risks and possible benefits of such action.

5. How much will it cost to apply for DACA benefits?

The Wolf memo suggests the DACA filing fee *could* be reduced since the length of the benefit will be shortened and applicants will have to file annually to maintain DACA benefits. The Wolf memo does not reduce the filing fee and does not guarantee it will be reduced. The Edlow memo acknowledges that USCIS continues to review the feasibility of decreasing the filing fee during the interim period the DACA policy is under review. However, the current filing fee for DACA remains at \$495.00. Given the uncertainty of any decrease, we recommend that, if you intend to renew and are within the time frame to renew, you apply as soon as possible.

6. My DACA is expired, will USCIS refer my case to ICE for enforcement purposes?

If your DACA is expired, we recommend that, if eligible, you apply to renew as soon as possible. If you are interested in attending one of our upcoming, free DACA renewal clinics, you can register [here](#). We are updating the calendar frequently with new clinic offerings.

The Edlow memo reconfirms that USCIS will continue to use the info-sharing policy outlined in the prior Napolitano memo as it relates to enforcement and which is set forth in USCIS's Form I-821D instructions. In sum, the government has stated that information provided to USCIS in DACA requests will not be proactively provided to ICE and/or CBP for the purpose of immigration enforcement, unless the requestor meets the criteria for the issuance of a Notice to Appear set forth in USCIS's 2011 guidance. USCIS will review its guidance to decide whether the agency deems the referral warranted.

7. My work permit was lost, stolen or destroyed. Can I request a replacement?

If you are currently in a valid period of DACA, you may apply to replace a lost, stolen, or destroyed EAD/work permit by filing a new Form I-765 and paying the \$495.00 filing fee. If your DACA benefits have expired and you are within the timeframe to renew, you may seek to renew your DACA protection and, within that process, seek a new work permit.

Consistent with the guidance in the Edlow memo, a two-year DACA recipient who applies for a replacement work permit due to loss, theft, or the mutilation of their prior work permit will receive a replacement work permit with the same expiration date based on the original two-year validity period.

8. Can a current DACA recipient apply for special permission to travel (“advance parole”)?

The prior guidance allowing for consideration of advance parole for DACA recipients based on employment, educational, or humanitarian purposes is no longer in effect. The Wolf memo indicated that USCIS will reject all applications for advance parole absent “extraordinary circumstances.” The Edlow memo further clarifies that USCIS will consider requests for advance parole on a case by case basis involving an assessment of the totality of factors present. USCIS may grant advance parole if there is an urgent humanitarian reason or a significant public interest to do so. The memo outlines the following as examples that could warrant a grant of advance parole to a DACA recipient:

- Travel to support the national security interests of the United States including U.S. military interests;
- Travel in furtherance of U.S. federal law enforcement interests;
- Travel to obtain life-sustaining medical treatment that is not otherwise available to the DACA recipient in the United States;
- Travel needed to support the immediate safety, well-being, or care of an *immediate* relative, particularly minor children of the DACA recipient.

If you filed a request for advance parole on or after July 24, 2020, under the prior guidance, USCIS will reject your request and return your filing fee. You may resubmit your request for advance parole as laid out in the Edlow memo. If you filed a request for advance parole on July 23, 2020 or earlier and it remains pending, you will receive a notice from USCIS informing you that the agency has administratively closed your request and informing you of the ability to refile consistent with the memo. Your filing fee will not be returned in this instance.

If you would like to explore advance parole, we recommend that you schedule a consultation with a licensed attorney or DOJ recognized organization to see if advance parole is a safe option for you to pursue. To schedule a legal consultation with NIJC, individuals can call 312.660.1370 on Tuesdays or Thursdays or email nijcild@heartlandalliance.org.

9. I have or had DACA but I also have another application for an immigration benefit pending with USCIS. How do these memos affect my pending application for other immigration benefits?

USCIS will continue to process your pending application for other immigration benefits. If you have a legal representative, speak to them about whether you are eligible for a work permit based on your pending application or whether you should renew your DACA benefits and seek a work permit via those means.

There may be other reasons to maintain DACA benefits, even as you seek other immigration status. For example it is possible future laws will recognize people with DACA as eligible for permanent status, or the other immigration status you seek may not be certain, in which case retaining DACA may be advantageous. If you do not have a legal representative, we recommend that you schedule a consultation with a licensed attorney or DOJ recognized organization. To schedule a legal consultation with NIJC, individuals can call 312.660.1370 on Tuesdays or Thursdays or email nijcild@heartlandalliance.org.

10. Even though DACA is still in effect, I am afraid I might one day be forced to return to my home country, where I fear harm. What can I do?

U.S. immigration laws offer certain protection-based immigration benefits. For example, if you are afraid to return to your home country because you believe you will be harmed (“persecuted”) based on your race, religion, nationality, membership in a particular social group or political opinion, then you may be eligible for asylum or another protection-based immigration benefit. This is a complex area of the law and requires an in-depth analysis of your specific fear of return. If you are afraid to return to your home country, we recommend that you schedule a consultation with a licensed attorney or DOJ recognized organization.

11. Does the Social Security Number (SSN) I received belong to me forever?

The SSN that you received after to your initial DACA grant will belong to you for life. In fact, you can continue using your SSN for various matters (banking, housing, education, etc.). In terms of lawful employment, you may need to present a valid EAD/work permit in order to utilize your SSN for employment purposes.

12. My work permit expires soon; do I have to tell my employer?

You are not legally obligated to notify your employer that your work permit is expiring. The employer is obligated to make sure it is employing individuals that are authorized to work. If the employer asks you for a new work permit, you have until your current work permit expires to produce a new one. If you do not produce a new work permit when your current work permit expires, your employer can terminate you. However, the employer has to give you the opportunity to present a new work permit and cannot take negative action against you (i.e. terminate your employment) until your current work permit expires.

13. What can I do now?

We highly encourage you to consult with a legal service provider about the possibility of renewing their DACA. We also encourage you and your family members to seek a legal consultation to explore other potential forms of immigration relief. NIJC has found that 14.3% of individuals screened for DACA eligibility were potentially eligible for more permanent forms of immigration relief. To schedule a legal consultation with NIJC, individuals can call 312.660.1370 or email nijcild@heartlandalliance.org.